

Report on the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

October 2025



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October 2025



About the Committee

The Committee was established on 26 May 2021. Its remit can be found at www.senedd.wales/SeneddLJC

Current Committee membership:



Committee Chair:
Mike Hedges MS
Welsh Labour



Alun Davies MS
Welsh Labour



Samuel Kurtz MS
Welsh Conservatives



Adam Price MS
Plaid Cymru

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1. Introduction

On 2 June 2025, Huw Irranca-Davies MS, the Cabinet Secretary for Climate Change and Rural Affairs (the Cabinet Secretary), introduced the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill (the Bill) to the Senedd.¹

1. On 13 May 2025, the Business Committee referred the Bill to the Climate Change, Environment, and Infrastructure Committee to consider and report on its general principles, by the deadline of 24 October 2025.²
2. The Cabinet Secretary laid an accompanying Explanatory Memorandum (the EM)³, incorporating the regulatory impact assessment and Explanatory Notes, and issued a written statement⁴.
3. On 2 June 2025 the Cabinet Secretary wrote to the Climate Change, Environment and Infrastructure Committee with a copy of the Statement of Policy Intent, and further documents to assist scrutiny of the Bill.⁵
4. On 3 June 2025, the Cabinet Secretary also made an oral statement in plenary in respect of the Bill.⁶

Purpose of the Bill

5. In the EM, the Cabinet Secretary states that the main purpose of the Bill:

¹ The Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, as introduced

² Business Committee, Timetable for consideration: Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, June 2025

³ Welsh Government, Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes Explanatory Memorandum

⁴ Welsh Government, Introduction of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, 2 June 2025

⁵ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs to the Climate Change, Environment and Infrastructure Committee, 2 June 2025

⁶ Plenary, 3 June 2025, Record of Proceedings

“... is to strengthen and enhance our response to the climate and nature emergencies.”⁷

6. The EM also states:

“The Bill establishes certain environmental principles and an environmental objective. It will require the Welsh Ministers and Natural Resources Wales (NRW), when making policy, and certain other public authorities, when carrying out strategic environmental assessment (SEA), to apply the principles, and to integrate environmental protection.

The Bill will establish a statutory body “The Office of Environmental Governance Wales” who will be responsible for ensuring public authorities comply with their duties under environmental law in Wales.”⁸

7. The long title of the Bill states that it is a Bill to:

“Make provision about environmental principles and the integration of environmental protection; to establish the Office of Environmental Governance Wales with powers to ensure public authorities’ compliance with environmental law; to make provision for the setting of biodiversity targets; and for connected purposes.”⁹

The Committee’s remit

8. The remit of the Legislation, Justice and Constitution Committee is to carry out the functions of the responsible committee set out in Standing Orders 21 and 26C. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs, within or relating to the competence of the Senedd or the Welsh Ministers, including the quality of legislation.

9. In our scrutiny of Bills introduced into the Senedd, our approach is to consider:

⁷ EM, paragraph 1.1

⁸ EM, paragraphs 1.2 and 1.3

⁹ The Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, as introduced, page 1

- matters relating to the competence of the Senedd, including compatibility with the human rights protected by the European Convention on Human Rights;
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen in relation to the granting of powers to the Welsh Ministers to make subordinate legislation;
- any other matter we consider relevant to the quality of legislation.

10. We took oral evidence from the Cabinet Secretary on 30 June 2025.¹⁰

11. Following the evidence session, we wrote to the Cabinet Secretary with questions not reached during the session.¹¹ The Cabinet Secretary responded to our questions on 12 September 2025¹² and a copy of this letter is included at [Annex 1](#).

12. We also received evidence from the Green Alliance¹³, and we are thankful to it for engaging in our work.

¹⁰ [Legislation, Justice and Constitution Committee](#), 30 June 2025

¹¹ [Letter to the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs](#), 9 July 2025

¹² [Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs](#), 12 September 2025

¹³ LJC Committee, [LJC\(6\)-21-25 Submission from Green Alliance](#), 26 June 2025

2. Legislative competence

The Welsh Government is satisfied that the Bill would be within the legislative competence of the Senedd.¹⁴

13. We considered the Bill under the reserved powers model of legislative competence, as set out in section 108A of the *Government of Wales Act 2006* (the 2006 Act).

14. In her statement on legislative competence, the Llywydd stated that, in her view:

“... most of the provisions of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill would be within the legislative competence of the Senedd.

The following provisions would not be within competence because they require the consent of the Secretary of State, and such consent has not been obtained at this time:

- *Section 6(3) and (4) – Environmental principles and integrating environmental protection statement*
- *Section 10 – Duty to prepare and publish strategy*
- *Section 11 – Monitoring and reporting*
- *Section 13 – Advice, guidance and assistance on environmental law*
- *Section 14 – Information notices*
- *Section 15 – Investigations*
- *Section 16 – Compliance notices*
- *Section 17 – Urgent compliance notices*
- *Section 18 – OEGW’s review of compliance notices*

¹⁴ EM, Member’s Declaration, page 1

- *Section 19 – High court review after failure to take specific action*
- *Section 20 – Improvement reports*
- *Section 26 – Confidentiality requirements: public authorities*
- *Section 33(1) (insofar as it relates to new section 6F of the Environment (Wales) Act 2016) – Biodiversity targets*
- *Schedule 2 – The Office of Environmental Governance Wales: strategy*.¹⁵

15. When the Cabinet Secretary gave evidence to us on 30 June 2025, he confirmed that he was satisfied the Bill was within the Senedd’s legislative competence, “subject to a number of other provisions needing Minister of the Crown consent.” He stated that he had written to the Secretary of State for Wales and that this consent process was under way.¹⁶

16. We asked the Cabinet Secretary what account had been taken of human rights in preparing the Bill. The Cabinet Secretary responded:

*“The first and important thing to say is that my view is that there are no convention rights directly engaged by this Bill. However, in the unlikely event that a provision does engage convention rights, then any interference with those rights would be justified in the context of the Bill, in that it’s pursued a legitimate aim, it’s necessary and it’s proportionate. But I should say as well, Chair, we have, of course, undertaken a full suite of impact assessments, including equality assessments, socioeconomic duty impact assessments, and so on.”*¹⁷

Our view

17. We note the evidence in relation to matters of legislative competence from the Cabinet Secretary.

18. We further note from the Llywydd’s statement on legislative competence that, in her view, Minister of the Crown consent is required in relation to sections

¹⁵ Presiding Officer’s Statement on Legislative Competence, 2 June 2025

¹⁶ LJC Committee, 30 June 2025, RoP [10]

¹⁷ LJC Committee, 30 June 2025, RoP [11]

6(3) and (4), 10, 11, 13 to 20, 26 and 33(1), and Schedule 2. We acknowledge it is the responsibility of the Cabinet Secretary to seek and obtain this consent.

19. We note the comments made by the Cabinet Secretary regarding the human rights impacts of the Bill. As we have stated previously¹⁸, we believe that an assessment of a Bill's engagement with the rights protected by the ECHR should be included as a matter of course within the accompanying EM, and that assessment should also set out any steps which have been taken to make that engagement proportionate. We believe that following this approach would assist Members of the Senedd in their consideration of a Bill.

Conclusion 1. We note the Cabinet Secretary's comments in respect of the Bill's impact on convention rights but believe that, as a matter of good practice, an Explanatory Memorandum should always include a commentary on the consideration given to such implications.

¹⁸ See, for example, conclusion 1 of our [Report on the Welsh Language and Education \(Wales\) Bill](#), conclusion 1 of our [Report on the Elections and Elected Bodies \(Wales\) Bill](#), conclusion 1 of our [Report on the Environment \(Air Quality and Soundscapes\) \(Wales\) Bill](#), and conclusion 1 of our [Report on the Homelessness and Social Housing Allocation \(Wales\) Bill](#)

3. General observations

Background and context

20. Environmental governance in the context of the Bill refers to an accountability system, whereby implementation and compliance with environmental law by public authorities is monitored, improved and (where needed) enforced by an independent body or ‘watchdog’.¹⁹

21. The European Union (EU)’s system of environmental governance, which previously applied in and to the UK, includes the monitoring and reporting on environmental law implementation, a method of receiving citizens’ complaints, and enforcement action when breaches of EU law occur.

22. Since the UK’s exit from the EU, statutory domestic environmental governance bodies have been established for the other UK countries:

- The Office for Environmental Protection (OEP) for England and Northern Ireland was legally established by the *Environment Act 2021*, and
- Environmental Standards Scotland (ESS) was established by the *UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021*.

The development of and need for the Bill

23. In the EM the Cabinet Secretary notes that the majority of environmental law in Wales (and the rest of the UK) over the last forty years has been derived from the EU and explains the transitional legislative arrangements put in place to manage EU exit.²⁰

24. In establishing the Office of Environmental Governance Wales (OEGW) as a statutory body to provide strategic oversight of environmental law compliance by public authorities in Wales, the Cabinet Secretary states in the EM:

“The oversight provided by the body is raised after the UK’s exit from the EU, which left a gap in the oversight provided by the

¹⁹ Senedd Research, [Environment \(Principles, Governance and Biodiversity Targets\) \(Wales\) Bill, Bill Summary](#), June 2025

²⁰ EM, paragraphs 3.58 to 3.66

European Commission and the Court of Justice of the European Union.”²¹

25. In the EM, the Cabinet Secretary also refers to the appointment of an Interim Environmental Protection Assessor for Wales (IEPAW) to manage environmental law issues until the OEGW is fully operational, stating:

“The IEPAW’s remit is limited compared to the intended scope of the OEGW but provides a temporary mechanism for oversight and recommendations. The Bill also outlines the OEGW’s duty to cooperate with other environmental oversight bodies in the UK, like the Office for Environmental Protection (OEP) and Environmental Standards Scotland (ESS), ensuring cross-border environmental issues are addressed collaboratively.

In summary, the Bill seeks to rectify the oversight gap left by the UK’s departure from the EU, strengthening environmental governance in Wales through the establishment of the OEGW. It aims to enhance the effectiveness of environmental law by ensuring compliance, providing strategic oversight, and fostering collaboration among public authorities and environmental bodies.”²²

26. The absence of environmental principles from the statute book in Wales is also noted by the Cabinet Secretary in the EM. He states:

“The Welsh Government’s intention in bringing forward primary legislation now is to incorporate environmental principles to meet a range of policy challenges and opportunities, and which take account of changes arising from the UK’s exit from the EU, so that environmental principles are implemented clearly and effectively on a statutory basis once the Act comes into force. This will provide a foundation and strategic framework to policy making, and strategic environmental assessment, which will help strengthen the response to a range of important policy matters, including in particular the climate and nature emergencies”.²³

²¹ EM, paragraph 3.24

²² EM, paragraphs 3.28 to 3.29

²³ EM, paragraph 66

Intergovernmental working and timing of the Bill

27. We asked the Cabinet Secretary what discussions he has had with the UK Government in relation to the Bill, and for what purpose. He told us:

“We’ve had extensive discussions with UK and Scottish Governments on the Bill, especially in respect of the establishment of the Office of Environmental Governance Wales, because, as you know, they have been ahead of us slightly with their bodies. So, we’ve been keen to learn lessons and what we might do differently in a Welsh context.

There have been some pitfalls, I’ve got to say, that they’ve experienced, so we’ve been able to learn from them (...) we also have something tailored to the unique Welsh legislative landscape. (...)

Specifically, we’ve engaged on the development of the biodiversity targets as well, to discuss the approaches and how they’re set out in legislation. We’ve compared specific targets. Again, we’ve looked at lessons learned. (...) We’ve engaged with the Wales Office. We provide technical briefings to representatives from the UK, Scottish and Northern Ireland Governments as well. So, I’m really pleased to say it’s been extensive and over quite a sustained period as well.”²⁴

28. We also explored with the Cabinet Secretary why there had been a delay in bringing the Bill forward, noting that the Bill was initially promised in 2018. The Cabinet Secretary said he recognised the frustration of some stakeholders.²⁵ He said that the Welsh Government has not “just been standing still on this”, adding that it had “done things here in Wales they have not done in other countries”.²⁶ The Cabinet Secretary drew attention to environmental legislation enacted, and other policy developments.²⁷

29. We highlighted that other countries have been undertaking similar activity but had also been able to deliver environmental governmental legislation and, as

²⁴ LJC Committee, 30 June 2025, RoP [12] to [14]

²⁵ LJC Committee, 30 June 2025, RoP [19]

²⁶ LJC Committee, 30 June 2025, RoP [21]

²⁷ LJC Committee, 30 June 2025, RoP [21]

such, we pressed for an explanation as to why it had taken two Seneddau to reach this position.²⁸ The Cabinet Secretary responded:

*"I agree with that. The justification is needed. But I would say part of my justification is we've taken forward pieces of legislation that they haven't done in other countries."*²⁹

30. Examples of this legislation cited by the Cabinet Secretary included the redirection of transport spending in a way that had not been done in other countries and prioritising agricultural reform.³⁰ In response to further questioning, he added:

*"Whilst you may not be content with my explanation, this is not an issue of capacity."*³¹

31. When we asked whether the Cabinet Secretary had deprioritised the Bill, the Cabinet Secretary replied:

*"No, we didn't. If we succeed, with the will of the Senedd and the committees in taking this forward, we will have made good on our commitment to deliver it now in this parliamentary term. We appreciate it is towards the end of this parliamentary term-"*³²

32. However, the Cabinet Secretary added:

*"... but it is deliverable. We can either go back along, 'Why has it taken so long?', or I can say to you, 'There are reasons why we have prioritised other work first and we are now coming to this.' It's not a capacity issue, it's prioritisation. That is always the case. And you know, as a former Minister, I need to prioritise one after the other. But we have not been standing still. We have been doing many other things, and this can be delivered within this Senedd."*³³

²⁸ LJC Committee, 30 June 2025, RoP [22]

²⁹ LJC Committee, 30 June 2025, RoP [23]

³⁰ LJC Committee, 30 June 2025, RoP [23]

³¹ LJC Committee, 30 June 2025, RoP [24] to [25]

³² LJC Committee, 30 June 2025, RoP [24] to [25]

³³ LJC Committee, 30 June 2025, RoP [31]

33. When we sought clarification on whether there had been prioritisation in the Welsh Government, the Cabinet Secretary said:

*"It's more than a semantic decision, it's a very practical consideration of Government. In choosing priorities, whether it's in budgets or legislative priorities, you always put things in an order of the way you're going to work through them. But it doesn't mean you don't get to all of them, Chair. It means you get to them in a sequence."*³⁴

34. The Cabinet Secretary also told us:

*"... as a result of bringing this forward right here right now, that means we have a distinct advantage. And the advantage is, through that engagement we've had with other Governments, we have been literally able to interrogate what's worked, what hasn't worked, what can we do better, how do we strengthen this legislation. And I would argue it's in a better place because of it. I do understand those who would say we should have been here sooner, but we haven't been standing still."*³⁵

The overarching strategic and legislative framework

35. In the course of our scrutiny we sought to understand the overarching strategic and legislative framework that exists in the relationship between the OEGW and existing environmental bodies.

36. We asked the Cabinet Secretary how the Welsh Government intended to avoid duplication and overlap of functions between the OEGW and Natural Resources Wales (NRW). He said:

"... we're confident that we have avoided that overlap within the Bill, to the extent that we're able. We've included specific measures, as well, to make sure that it's minimised (...) But it's important to say that the OEGW is a strategic oversight body. There's a clear separation from existing regulatory bodies and the governance body. So, this will allow the OEGW to focus specifically on monitoring and enforcing compliance with

³⁴ LJC Committee, 30 June 2025, RoP [40]

³⁵ LJC Committee, 30 June 2025, RoP [37]

environmental law without becoming involved in the decision-making processes of other regulatory bodies.”³⁶

37. The Cabinet Secretary provided an example in relation to compliance notices under section 16 of the Bill, noting:

“... compliance notices issued by the OEGW wouldn't be able to overturn, or overlap, as your question puts it, with planning and licensing decisions made, for example, by NRW or by local authorities or other public bodies. The Bill also, of course, has within it details of how it will exercise its functions in a way that doesn't overlap with other bodies as well, the functions of other bodies-so the auditor general, the future generations commissioner, the information commissioner, NRW and the public services ombudsman. It's very specific in avoiding those overlaps. Those bodies do specific functions, this does a specific function, and it is that strategic oversight and compliance with environmental law.”³⁷

38. In writing to us after the evidence session, the Cabinet Secretary also told us that it was important not to conflate the oversight role of the OEGW with the roles of regulatory bodies.³⁸

39. During the evidence session, we also expressed concerns about the complexity of the structures and legislative framework being established, and that they could inhibit accountability.³⁹ We therefore asked the Cabinet Secretary to write to the Committee with an organogram explaining how the different pieces of legislation, processes, targets, objectives fit together.⁴⁰ The Cabinet Secretary provided this information in his letter of 12 September 2025.⁴¹

40. The Cabinet Secretary responded:

“No, no, completely not. I'll come back to the purpose of this Bill that we have in front of us, which is that strategic oversight of compliance with environmental law and policy-a strategic look

³⁶ LJC Committee, 30 June 2025, RoP [92]

³⁷ LJC Committee, 30 June 2025, RoP [93]

³⁸ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025. See also LJC Committee, 30 June 2025, RoP [98] to [110].

³⁹ LJC Committee, 30 June 2025, RoP [124]

⁴⁰ LJC Committee, 30 June 2025, RoP [126]

⁴¹ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025

at it. So, this OEGW, looking at the principles, looking at the targets, can make its decisions to say where do they think I, as a Minister, am failing in delivering the halting and reversing of biodiversity and failing in delivering good standards of environmental protection. That doesn't replicate what's been done in the agri Act with the sustainable land management principles, all four of them. It doesn't replicate, it actually dovetails with what we're doing on the well-being of future generations Act, which is referenced within this, by the way, and dovetails what we're doing with the environment Act and the section 6 duties. It actually pulls together with it.

But I do understand what the committee is saying, from a member of the public's perspective or a farmer out in the field, if they say, 'Well, how does this Act change the way that I'm using my slurry this year going ahead, or what I'm doing with the rivers and hedgerow planting?' That's actually within the SFS, which flows from the agri Act, but all of it should be held together. What this Bill does is have strategic oversight to say, 'Are the decisions that Welsh Ministers are making actually delivering that halting and reversing biodiversity loss?' So, they're not going to set a new regulation for NRW."⁴²

41. The Committee explored with the Cabinet Secretary some real-life examples in an attempt to clarify how the structures and legislation would work in practice and whether the arrangements are sufficiently clear. During this discussion, and as an example, an official accompanying the Cabinet Secretary referred to ongoing work at an official level that is considering the Sustainable Farming Scheme within the context of this Bill and the targets which may be set.⁴³

Balance between what is on the face of the Bill and what is left to subordinate legislation and guidance

42. The Bill contains five delegated powers enabling the Welsh Ministers to make subordinate legislation.

⁴² LJC Committee, 30 June 2025, RoP [133]

⁴³ LJC Committee, 30 June 2025, RoP [138]

43. These powers are summarised in Table 5.1 of the EM. The Bill also contains a power to issue a statement (including guidance) which is summarised in Table 5.2 of the EM.

44. Of the five delegated powers in the Bill, one is a power to amend primary legislation (a Henry VIII power): paragraph 2(3) of Schedule 1 to the Bill allows the Welsh Ministers to amend the total number of non-executive members of the OEGW by regulations.

45. Whilst the delegated power in section 29(4) of the Bill is not strictly a Henry VIII power, we note its effect is similar in substance. This power allows the Welsh Ministers to provide that provision is, or is not, within the definition of ‘environmental law’ in the Bill. Whilst such a designation by regulations would not expressly amend the Bill, its effect would be to impliedly amend the Bill to remove such subject matter outside the scope of the Bill’s provision.

46. In the Statement of Policy Intent⁴⁴ for the subordinate legislation to be made under the powers in the Bill, the Cabinet Secretary states that, in instances of uncertainty or disagreement, it may be necessary for the courts to ultimately decide whether provision constitutes ‘environmental law’. We asked the Cabinet Secretary what assessment has been made of the impact of this on the justice system, to which he responded:

“The Justice System Impact Identification Assessment, agreed with MoJ, reflects our view that there will be negligible impact on the justice system. Referrals to the court, including around whether a provision constitutes environmental law, are intended to be made as an option of last resort once all other methods to address a failure has been explored, including informal resolution (advice and guidance), information notices and compliance notices, as well as improvement reports.”⁴⁵

Our view

47. We note the Cabinet Secretary’s evidence regarding the development of the Bill and the timing of its introduction to the Senedd. In particular, we acknowledge the Cabinet Secretary’s statements that the Welsh Government has ‘not been standing still’ in this area and has taken forward other legislation and

⁴⁴ Welsh Government, [Statement of Policy Intent](#)

⁴⁵ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 9

policy developments, including the redirection of transport spending and agricultural reform.

48. We are not persuaded by the explanations and evidence provided by the Cabinet Secretary, and we do not consider that the delay to the introduction of this important primary legislation has been adequately explained to the Senedd.

49. The Cabinet Secretary told us the Welsh Government is “delivering” the legislation in this Senedd. However, while the environmental objective and principles will come into force two months after the Bill receives Royal Assent, and the Welsh Ministers’ duty to have special regard to those principles will commence after 6 months, the OEGW may not be operational for up to two years from Royal Assent and most other provisions in the Bill are to be commenced by Order at the discretion of the Welsh Ministers.

50. Furthermore, and specifically as regards setting biodiversity targets, the Bill itself does not set targets, with the primary legislation only requiring the Welsh Government to bring forward regulations setting targets in four priority areas within three years of Royal Assent.

Conclusion 2. Despite the Cabinet Secretary’s statements, we are of the view that, without robust evidence to the contrary, it appears that the Bill has been de-prioritised by the Welsh Government.

51. We also note the Cabinet Secretary’s explanations as regards this new legislation and the overarching strategic and legislative framework. We comment further on the environmental principles and the OEGW in the next chapter.

52. Finally, we note that the Bill contains five powers for the Welsh Ministers to make regulations and orders, one of which is a Henry VIII power, and one power that will require the Welsh Ministers to publish a statement. Subject to our comments on specific powers and provisions in the Bill, we are content with the balance between what is on the face of the Bill and what is left to subordinate legislation. We discuss specific delegated powers in the Bill in more detail in Chapter 4 of our report.

4. Specific observations

Part 1 – Environmental Objective And Principles

Background

53. Part 1 of the Bill makes provision imposing duties on the Welsh Ministers, NRW and certain other public authorities to have regard to environmental principles and to integrate environmental protection. In the EM, the Cabinet Secretary states:

“These duties are essential to contribute to protecting and improving the environment, in particular from the effects of the climate and nature emergencies.”⁴⁶

54. Section 2 defines certain “environmental principles” for the purposes of Part 1, namely:

- the precautionary principle, so far as relating to the environment;
- the principle that preventative action should be taken to avoid environmental damage;
- the principle that environmental damage should as a priority be rectified at source;
- the polluter pays principle.

55. The draft Explanatory Notes to the Bill states that:

“These principles are informed by a number of sources including international agreements and the EU. The interpretation of these principles is increasingly well established and continues to develop in different contexts, with complex interplays between international commitments, international law, domestic legislation and caselaw, for example. The environmental principles and integrating environmental

⁴⁶ EM, Annex 1: Explanatory Notes to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, paragraph 4

protection statement (section 6) will provide further detail on the interpretation and application of the principles.”⁴⁷

56. Section 3(1) requires the Welsh Ministers, for the purpose of contributing to the environmental objective, to have special regard to the environmental principles when making policy in relation to Wales that has, or could have, any effect on the environment and to integrate environmental protection into the making of such policy. Subsection (2) requires the Welsh Ministers to have regard to the environmental principles and integrating environmental protection statement, or revised statement, published under section 6 when complying with the duty in subsection (1). Subsection (3) defines “policy”, “making policy” and “Wales” for the purposes of section 3.

57. Subsection (1) of section 5 requires certain public authorities, for the purpose of contributing to the environmental objective, to have regard to the environmental principles and to integrate environmental protection when carrying out certain functions. Subsection (2) provides that the duty in subsection (1) applies to any functions in connection with the assessment of plans and programmes relating solely to Wales or to any part of Wales under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004.⁴⁸ Subsection (3) specifies that public authorities must have regard to guidance included in the environmental principles and integrating environmental protection statement (or revised statement) published under section 6 when complying with the duty in subsection (1). Subsection (4) defines “public authority” for the purposes of sections 5 and 6.

58. Section 6 places a duty on the Welsh Ministers to prepare and publish an “environmental principles and integrating environmental protection statement”. In particular, subsections (2) and (3) provide that the statement must include guidance to NRW and public authorities respectively about the duties imposed on them.

59. Section 7 sets out the procedural and consultation requirements in connection with the preparation and publication of the statement required under section 6. In particular, subsection (2) requires the Welsh Ministers to lay before the Senedd a copy of the statement (or revised statement) published under section 6 and a document giving the details of the consultation carried out under

⁴⁷ EM, Annex 1: Explanatory Notes to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, paragraph 19

⁴⁸ S.I. 2004/1656 (W.170).

subsection (1) and summarising the representations received and the Welsh Ministers' response to them.

Evidence from the Cabinet Secretary

The environmental principles and section 6 statement

60. We asked the Cabinet Secretary to confirm the Welsh Government's intentions regarding the four environmental principles and the statement required by section 6 of the Bill. The Cabinet Secretary responded:

*"... these principles are very well grounded, very well established, and they are understood and operate within not just a legal perspective, but also in an operational perspective. The precautionary principle doesn't stop everything going, but the fact that it's one of the fundamental principles means that you have to have that regard, or, in the case of this Bill, in some situations, special regard to it in terms of environmental protection."*⁴⁹

61. When we questioned the Cabinet Secretary on issues arising from different interpretations of the principles since their evolution, the Cabinet Secretary said:

"this is the clarity that will come through the [section 6] statement that underpins this. So, as the explanatory notes explain, we have a statement that will improve understanding of the interpretation and application of the principles. (...)

So, in practice, the statement will include in practice the interpretation of these principles. So, the statement should be used to explain how the principles apply in different circumstances, what they mean in those circumstances, and that, as you say, is what is set out in section 6(1) to 6(3), that the statement must include some certain specific matters relating to interpretation and the application of the duties imposed on Welsh Ministers. So, this covers, for example, how the environmental principles relate to each other, the duty to integrate environmental protection, and how the environmental principles and the duty to integrate environmental protection relate to the environmental objective.

⁴⁹ LJC Committee, 30 June 2025, RoP [44]

It also needs to set out detailed guidance to NRW and those certain other public bodies in connection with the duties imposed and how they should comply with those duties and guidance. So, this is what will help, actually, public authorities and other interested parties to understand how those principles should be applied.”⁵⁰

62. We also invited the Cabinet Secretary to clarify and give commitments as to how the preparation and agreement of the statement would work in practice and how the Senedd would be involved in the process. The Cabinet Secretary responded:

“So, first of all it’s important to say that the Bill actually lays out some detailed procedural requirements for the preparation and publication of the statement, or indeed a revised statement as well. And it requires Welsh Government Ministers to consult Natural Resources Wales, the Future Generations Commissioner for Wales, OEGW and other persons as they see appropriate. We have to-Welsh Ministers have to lay before the Senedd a copy of that statement or revised statement as well. It’s got to have a document giving details of the consultation carried out, summarising the representations received and Welsh Ministers’ response to them. This will enable that essential Senedd scrutiny of the statement or revised statement. But I should say as well, if the Senedd or any of the committees want to actually input into that process-the preparation of the policy statement during the consultation process-they are of course free to do so, whether it’s this committee or the Climate Change, Environment and Infrastructure Committee or other committees, they can input directly into that. So, it’s very transparent.”⁵¹

63. We pursued the matter of Senedd involvement and the parliamentary process that would be involved in the agreement of the statement when we wrote to the Cabinet Secretary after our evidence session. In his letter dated 12 September, the Cabinet Secretary said:

“The Bill sets out detailed procedural requirements for the preparation and publication of the statement, or a revised

⁵⁰ LJC Committee, 30 June 2025, RoP [45] to [48]

⁵¹ LJC Committee, 30 June 2025, RoP [50]

statement, and requires the Welsh Ministers to consult NRW, the Future Generations Commissioner, the OEGW and such other persons as they consider appropriate.

The Welsh Ministers must also lay before the Senedd a copy of the statement, or revised statement, and a document giving details of the consultation carried out and summarising the representations received and the Welsh Ministers' response to them. That is the method by which the Senedd will be able to scrutinise the statement or revised statement.

These provisions are sufficient to provide necessary transparency, accountability and engagement, in the Senedd and with others, and support the effective development of the statement.

We do not think it is necessary, or appropriate, to subject this statement to a specific Senedd procedure. The statement will be one of Welsh Government policy and guidance for NRW and other public authorities. The Welsh Ministers, NRW and certain public authorities will be required to "have regard" to the statement, or to guidance in the statement, in complying with their duties under Part 1 of the Bill to apply the principles and integrate environmental protection. Typically, other forms of statutory guidance are not subject to parliamentary scrutiny, for example statutory guidance under the Well-being of Future Generations (Wales) Act 2015 (sections 14, 22(2) and 51).

Nevertheless, I would be interested in hearing the Committee's views on how a Senedd process for the statement might work. However, I would also caution that any additional requirements could result in delays to the Welsh Government's ability to finalise and publish the statement before the provisions are commenced, which is currently to be six months following royal assent. If further processes and procedures are added, this timescale may need to be extended to compensate."⁵²

⁵² Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, page 2

A definition of “making policy”

64. Section 3 of the Bill requires the Welsh Ministers to have special regard to the principles when “making policy”, but the Bill does not comprehensively set out what is captured by the phrase ‘making policy’. The Cabinet Secretary told us:

“... this would include things like legislative proposals, things like policy statements, things like strategies and frameworks, ministerial statements setting out the Government's formal position on an issue, and frankly other formal policy documents that set out a change in approach to an established policy position.”⁵³

65. The Cabinet Secretary went on to say “it’s quite broad in the interpretation deliberately, so that this can bite on all that policy development and reviewing of policies”⁵⁴.

66. When he was asked if he is content that being deliberately broad gives sufficient legal certainty, the Cabinet Secretary responded:

“... I think there’s a good understanding of ‘making policy’ and the further definition in the Bill about developing, adopting and revising policies is pretty clear as well. But I think maintaining that breadth allows then, in the establishment of this Bill, the Welsh Ministers to be quite firm and forthright in the way that they seek to apply their duties... (...).

It's very similar to those that are applied in the UK and the Scottish Bills as well. It seems to be working for them.”⁵⁵

Meaning of “special regard”, “regard”, and “due regard”

67. In accordance with section 3 of the Bill, the Welsh Ministers must have “special regard” to the environmental principles when making policy. Similarly, NRW must also have “special regard” when making policy, in accordance with section 4 of the Bill. However, section 5 specifies that other public authorities must only have “regard” to the principles when carrying out functions in connection with the assessment of plans and programmes relating solely to

⁵³ LJC Committee, 30 June 2025, RoP [56]

⁵⁴ LJC Committee, 30 June 2025, RoP [56]

⁵⁵ LJC Committee, 30 June 2025, RoP [58] and [59]

Wales or to any part of Wales under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004.

68. We asked the Cabinet Secretary to clarify how “special regard” differs from “regard” and “due regard”. The Cabinet Secretary responded:

“... there is a specific reason. This is one of the points of difference and one of the learnings that we have taken from other legislation. So, the ‘special regard’ approach, which doesn’t feature in other pieces of legislation, means that Welsh Ministers and NRW have that higher level in giving regard to environmental principles. So, we must give-and again, it’s a rod for our back here-considerable importance and weight to the principles when we are making policy. You can contrast this, Sam, with the much more regularly used ‘due regard’ approach, where the weight to be given to factors is a matter for the decision maker. For example, on careful consideration, the decision maker could say in a particular case they can be given little, if any, weight. Here, we have to have special regard. (...)

... it emphasises the importance of an effective response to the nature and climate emergencies. It aims at a higher level of environmental protection. That’s why it’s a very deliberate choice of legalistic words here.”⁵⁶

69. The Cabinet Secretary further explained that it would be for the OEGW to determine whether the Welsh Ministers and NRW have given special regard to the principles, saying “that’s the importance of them making the decisions on this.”⁵⁷

70. When we wrote to the Cabinet Secretary after our evidence session, we asked what processes will be put in place by the Welsh Government to identify policy that has, or could have any effect on the environment, and how will Welsh Ministers go about having special regard to the principles. The Cabinet Secretary responded:

“The duty applies broadly across the full range of Welsh Government policy making, not just environmental policy.

⁵⁶ LJC Committee, 30 June 2025, RoP [61] and [62]

⁵⁷ LJC Committee, 30 June 2025, RoP [64]

Given the effect of the duty, it is important that the scope of the duty is clear. This is achieved by clarifying that the duty applies whenever a policy has, or could have, any effect on the environment.

In practical terms, there are very few policies which would not have any effect whatsoever on the environment..."⁵⁸

Our view

71. We note the Cabinet Secretary's evidence regarding Part 1 of the Bill.

72. We note that while the Welsh Ministers are required to set out how the principles relate to each other, and how they relate to the environmental objective, there is no express requirement to set out the interpretation of the principles.

73. We believe that the Welsh Government should take steps to remove the potential for uncertainty and to provide clarity and certainty on the principles' interpretation. We note the Cabinet Secretary's view, that the four environmental principles included in this Bill are well grounded, established and understood. But we do not believe that this view reflects the evolution of the interpretation of these principles at an international, EU and domestic level over several decades and the scope for different or unintended results arising from this.

74. We therefore believe that the Bill should be amended to insert an express requirement to set out how the principles should be interpreted in the statement. This would guarantee that the statement includes clear direction on how the principles are to be interpreted and applied, leaving no room for doubt in this regard.

Recommendation 1. The Cabinet Secretary should provide the Committee with a flow diagram explaining in detail how the Welsh Government envisages section 3 of the Bill being applied by Welsh Ministers in a real-world context. In particular, the explanation should include the processes in place to identify relevant policies, the assessment of whether a policy has (or may have) any effect on the environment, and the practical application of the duty to have special regard to the environmental principles.

⁵⁸ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 2

Recommendation 2. The Bill should be amended to include an interpretation provision that explains, using a non-exhaustive list, what constitutes “making policy” in section 3 of the Bill.

Recommendation 3. The Bill should be amended to require the Welsh Ministers to expressly set out how the four environmental principles are to be interpreted in the section 6 statement.

Recommendation 4. The Bill should be amended to provide that a statement laid under section 7(2) of the Bill must not be published and come into force if the Senedd resolves that the guidance should not be published within 40 days of laying.

Recommendation 5. The Bill should be amended to ensure that the statement prepared under section 6 of the Bill must be capable of coming into force within 6 months of Royal Assent, taking into account the 40 day standstill period in Recommendation 4.

Part 2 – The Office of Environmental Governance Wales

Background

75. As noted earlier in the report, Part 2 of the Bill establishes an independent environmental governance body, the Office of Environmental Governance Wales (“the OEGW”) to provide strategic oversight of requirements on public authorities to comply with environmental law, to make effective environmental law and to implement / apply environmental law effectively. The draft Explanatory Notes to the Bill state:

“The OEGW will hold the Welsh Government, and other public authorities, to account in relation to the environment in Wales in a way that is similar to what happens in the rest of the United Kingdom.”⁵⁹

76. Section 8 of the Bill establishes the OEGW as a body corporate and introduces Schedule 1, which makes further provision in respect of the OEGW.

77. Section 9 provides that the OEGW must exercise its functions for the general purpose of contributing to the environmental objective in an impartial, objective, proportionate and transparent manner. Section 10 (Duty to prepare and publish a

⁵⁹ EM, Annex 1: Explanatory Notes to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, paragraph 5

strategy) requires the OEGW to prepare and publish a strategy setting out how it intends to exercise its functions. It also introduces Schedule 2 which makes further provision about what the strategy must contain and procedural requirements.

78. Sections 11 to 28 of the Bill set the requirements for the OEGW to oversee public authorities' compliance with environmental law, and the implementation and application of environmental law in Wales, including the making of environmental law or its effectiveness.

79. Section 29 defines "environmental law" for the purposes of Part 2 of the Bill. It does so by reference to devolved provision, namely, legislation wholly or mainly relating to environmental protection that has, or could be made, by the Senedd. In the Statement of Policy Intent, the Cabinet Secretary says that the meaning of "environmental law":

*"... is a significant definition as it effectively sets the scope of the OEGW's functions which are defined by reference to public authorities compliance with environmental law, as well as whether environmental law has been made, implemented and applied effectively."*⁶⁰

80. Section 29(4) includes a regulation-making power, subject to the Senedd approval procedure, enabling the Welsh Ministers to specify devolved provisions which do or do not fall within the definition of environmental law. In the Statement of Policy Intent, the Cabinet Secretary says that the power is necessary to:

*"... ensure the definition of environmental law can be future proofed and updated with the latest developments in respect of international and domestic policy."*⁶¹

81. Section 30 of the Bill defines "public authority" for the purposes of Part 2, while section 31 clarifies that references to the "effectiveness of environmental law" in Part 2 of the Bill are references to its effectiveness in contributing to environmental protection.

82. Section 32 clarifies that references to "failing to comply with environmental law" in Part 2 of the Bill are references to the relevant public authority exercising

⁶⁰ Welsh Government, Statement of Policy Intent

⁶¹ Welsh Government, Statement of Policy Intent, page 3

its functions in a way that is contrary to environmental law, or failing to exercise its functions where the failure is contrary to environmental law.

Evidence from the Cabinet Secretary

Independence of OEGW

83. In our 9 July letter to the Cabinet Secretary, we asked his opinion of the suggestions made by the Green Alliance in written evidence⁶² to us that the Bill should be amended:

- i. to include a duty on the Welsh Ministers to respect the OEGW's independence (see paragraph 17 of Schedule 1 of the *Environment Act 2021*);
- ii. to clarify that the Welsh Ministers have no power of direction in relation to the OEGW (akin to paragraph 1 of Schedule 1 to the *UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021*).

84. The Cabinet Secretary responded:

"i. We do not consider it necessary to include this statement. The Bill already provides for the OEGW's independence and a statement along these lines would not change the effect of the Bill as we consider the detailed practical measures we've put in place throughout the Bill demonstrate and make effective the independence of the OEGW. Nevertheless, we recognise that a declamatory statement affirming the OEGW's independence, as provided for in the Bill already, can sometimes be helpful and would welcome the committee's views on this to inform our thinking going forward.

ii. As with question (i), we do not consider it is necessary to make express provision that the WMs have no power of direction. This is the effect of the Bill in any event. The Bill deliberately does not provide any power of direction for the Welsh Ministers in respect of the OEGW and we do not consider such a power could be implied. Further, there are instances where the Welsh Ministers have been given a power to direct. For example, The Natural Resources Body for Wales

⁶² LJC Committee, LJC(6)-21-25 Submission from Green Alliance, 26 June 2025

(Establishment) Order 2012 specifically allows the Welsh Ministers to give directions to NRW about the exercise of its functions. Welsh Ministers cannot tell the OEGW what to do (or what not to do) because there is no provision to enable them to do so. We, therefore, consider it would be unnecessary to clarify that WMs have no power of direction in relation to the OEGW on the face of the Bill.”⁶³

Appointment of OEGW’s Chair and Deputy Chair

85. In accordance with paragraph 8(2) of Schedule 1 to the Bill, the Welsh Ministers must consult a Senedd committee before appointing the OEGW’s chair and deputy chair. In our 9 July letter to the Cabinet Secretary we sought clarity on whether this was intended to be a pre-appointment hearing and, if so, why that is not stated on the face of the Bill. We also asked the Cabinet Secretary if he intended to add these roles to the list of offices subject to pre-appointment hearings under the protocol agreed between the Llywydd and the Welsh Government. The Cabinet Secretary told us:

“This consultation requirement fulfils a similar role to the pre-appointment hearing procedure in place for other significant public roles, such as the Well-being of Future Generations Commissioner and the Chair of Natural Resources Wales.

The committee should note the language used is similar to s17(3) of the Wellbeing of Future Generations (Wales) Act 2015, which does not state a ‘pre-appointment hearing’ must take place but places a clear requirement on Welsh Ministers to consult the relevant committee.

It is our intention to add these roles to the list of offices subject to pre-appointment hearings under the protocol.

As the Well Being of Future Generations (Wales) Act 2015 does not use the specific wording of “pre-appointment hearing”, we would appreciate any further thoughts from the committee if they consider this specific wording is necessary in this Bill.”⁶⁴

⁶³ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 4

⁶⁴ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 5

Duty to prepare and publish a strategy

86. The Bill does not make provision for a time limit to apply to when a strategy for the OEGW should be finalised. When we asked the Cabinet Secretary why this is the case he said:

"This comes back to the issue of independence, because we feel that it's very important to allow the OEGW to have independence on the strategy. It's wholly owned by the OEGW. So, Welsh Ministers have no role in signing off that strategy-and, by the way, this is more independent than the approach taken in England. Just to say, in England, the OEP has to have regard to guidance issued by the Secretary of State there in developing that strategy. We are hands off on this, Adam, entirely.

*So, in that context and with respect to OEGW's independence, we haven't put any constraints whatsoever on the strategy and when the strategy will be produced. It's for the OEGW to decide when it will bring it forward and when it's ready. However, the strategy, to be clear, will need to be finalised before its wider functions can be exercised. So, there is a clear and compelling timeline on the OEGW to get on with it. In that strategy, they will need to set out how they intend to exercise their functions, so it has to be produced, has to be formally consulted upon, before the OEGW can start to exercise their primary functions. So, actually, the timeline is in their hands and that gives them the independence, I have to say, as well, to devise the strategy and bring it forward according to the timeline they think is critical."*⁶⁵

Commencement of OEGW functions

87. The OEGW's functions will be commenced via Order made by the Welsh Ministers. We asked the Cabinet Secretary to clarify the Welsh Government's intentions as to when the OEGW would be fully operational.

88. The Cabinet Secretary responded:

"... the OEGW will be established two months after the Bill receives Royal Assent, in line with accepted conventions, alongside the powers to appoint the board, and followed by the

⁶⁵ LJC Committee, 30 June 2025, RoP [89] and [90]

commencement by Order of powers to develop the strategy. Then, the remaining functions will be commenced by Order. That is to make sure that the OEGW is not put under duty and obligations it can't possibly actually fulfil until it's fully operational, and then we get to the obvious question of when will it be fully operational... (...)

Based on precedent, on establishing bodies like this, it's pretty clear that, if you were going to be a great optimist, you're looking at 18 months; a realist would say 24 months. And it really is the whole back-room operations and functionality to make it happen. So, that's based on experience before. There's also, by the way-. I think one of my appearances might well be in front of the Finance Committee. There's also an issue of tying up some of the back-room stuff for cost-effectiveness. We've got other bodies coming down the line, such as the disused tips authority as well, but, in the meantime, the Interim Environmental Protection Assessor for Wales proceeds with their work as well.”⁶⁶

89. We reminded the Cabinet Secretary of the frustration amongst stakeholders of the time taken for the Bill to be introduced to the Senedd and asked whether that provided an argument for accelerating the process to make the OEGW operational. The Cabinet Secretary responded:

“... there are real, practical reasons why the full functionality will not be up and running as early as you might want, and that means that we have to make sure that before we impose all the obligations on the OEGW, they have everybody in place to do it, and that means bringing on the expertise, setting up the back-room functions and everything else.”⁶⁷

90. An official accompanying the Cabinet Secretary added:

“So, we will be looking at ways in which we can accelerate the timetable and bring it forward as quickly as possible because we absolutely recognise the frustration that lies here in the length of time this has taken, and many of the stakeholders are saying the same thing. We are working from very clear previous

⁶⁶ LJC Committee, 30 June 2025, RoP [78] to [80]

⁶⁷ LJC Committee, 30 June 2025, RoP [82]

plans on how long these things take and the kinds of procedures that you need to go through. One of the things that's quite interesting, and we got into with the Climate Change, Environment and Infrastructure Committee, is that there is a balance here to be played between ensuring the real independence of the body and the speed of setting it up. So, one of the things that you could do in order to try and speed up the process is to set up a shadow body, but, actually, our judgment is that it is better for the independence of the body not to do that. Unfortunately, that extends the timescales because it means you can't start certain things as early as you would with the shadow body, and there's a lot of concern from stakeholders as well about the independence of the body. So, it's a bit of a balancing act.”⁶⁸

Meaning of environmental law (section 29)

91. Environmental law is a key definition in the Bill. It covers legislation wholly or mainly relating to environmental protection that has been, or could be, made by the Senedd. We asked the Cabinet Secretary to confirm whether international conventions and agreements on the environment fall within the definition of ‘environmental law’ under the Bill. The Cabinet Secretary told us:

“... the OEGW's remit applies to environmental law which is devolved and wholly or mainly relates to environmental protection. This applies to international obligations where the policy is devolved.

For example, the Aarhus convention is a legally binding international treaty that has been ratified by the UK and establishes three core procedural environmental rights:

- *Access to environmental information*
- *Public participation in environmental decision-making*
- *Access to justice in environmental matters*

In terms of the application of these core rights in Wales and where it is within the legislative competence of the Senedd, and therefore a devolved provision, then the OEGW will have

⁶⁸ LJC Committee, 30 June 2025, RoP [83]

oversight of these matters. It will be the OEGW itself who determines, case-by-case, whether legislative provision in their view falls under this definition. The OEGW would therefore first need to establish whether this falls within the scope of environmental law and then, if so, be able to assess its effectiveness and any non-compliance.

Generally, we expect this would be straightforward, but, as with all legislative terminology, in time, and with an evolving legislative landscape on this subject matter, the courts may need to resolve any disputes about the interpretation of “environmental law” as defined in the Bill.”⁶⁹

92. In exercising its functions, the OEGW will be required to determine on a case-by-case basis whether legislation constitutes environmental law under the Bill. We asked the Cabinet Secretary if he is confident that this requirement is workable and feasible in practice. We also asked whether it is reasonable to expect the OEGW to enforce the law, and potentially escalate it to the High Court, on the basis of its own assessment of whether a provision is within the Senedd’s legislative competence. The Cabinet Secretary responded:

“We have no concerns about the feasibility and practicability of expecting the OEGW to use its functions and enforce the provisions. The environment is largely a devolved area and has been for some time so there is generally a good understanding of what is devolved. As mentioned in my answer to the question above, we expected the OEGW’s assessment of whether provisions falls within the scope of environmental law would be straightforward (though recognise this could change with an evolving legislative landscape).

Further, the OEGW’s Board will be comprised of expertise which includes knowledge and awareness of environmental law and policy in the context of the Bill, and this meaning of environmental law is expressly tied to devolved provision.

Further it is expected, although not specifically provided for in the Bill, that the OEGW will seek access to legal advice for such

⁶⁹ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 7

matters given the wide range of enforcement powers made available to them, as other public authorities do.

The EA 2021 also contains reference to devolved provision, so the same issue arises in respect of the OEP.”⁷⁰

93. The Welsh Ministers have a power under section 29(4) of the Bill to make regulations specifying whether provision is, or is not, within the definition of “environmental law”. When we asked the Cabinet Secretary to explain why this power is necessary, and whether he intended to routinely use it to identify which legislation, or parts of legislation, constitute “environmental law”, the Cabinet Secretary said:

“We have included a definition for “environmental law” to provide greater clarity. Arguments around what would and wouldn’t fit into the scope of environmental law can be broad and complex, covering areas like air quality, water, waste, biodiversity, and more.

The purpose of section 29(4) is to provide Welsh Ministers, subject to the Senedd approval procedure, a mechanism to update the definition of environmental law without needing to amend the primary legislation each time, where there is clear justification for doing so.

This will enable the Act to be futureproofed for an evolving legislative landscape and as this will be subject to Senedd approval and formal consultation in respect of secondary legislation. It is not something Welsh Ministers could do unilaterally, nor expect to use routinely. Notably, this power could also be used to reflect the circumstances covered by question 9: namely to reflect the findings of the court.”⁷¹

94. In the Statement of Policy Intent the Cabinet Secretary states that, if exercised, the power in section 29(4) of the Bill would be considered to “substantially affect provisions of the Bill by adding, amending or removing provisions which can be considered ‘environmental law’ for the purposes of the Act, and which has a substantial bearing on the scope of the Office of

⁷⁰ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 8

⁷¹ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 10

Environmental Governance’s oversight powers”.⁷² We asked the Cabinet Secretary to clarify to what extent this power could be used to exclude provision that currently falls under the definition of “environmental law” as drafted under the Bill. The Cabinet Secretary responded:

“The power could be used to exclude existing provision that has been considered environmental law prior to that point as the power is, deliberately, fairly broad and says the Welsh Ministers can provide that a devolved provision is, or is not, within the definition of environmental law.

As per the responses in question 9 and 10, this may be required or beneficial to reflect the findings of the court if there was any challenge around the scope of environmental law. It is worth reiterating, however, that the power is subject to the Senedd approval procedure and again, cannot be used unilaterally by Welsh Ministers.”⁷³

95. We also asked the Cabinet Secretary to explain why the Welsh Ministers will not be under a duty to consult the OEGW before making regulations to be made under section 29(4), to which he responded:

“Welsh Ministers are committed to consult on secondary legislation unless it is technical or not making substantial amendments.

We are aware the commitment of the Welsh Government to consult prior to making secondary legislation is one made by the existing Welsh Government and is not a statutory duty on them. We are giving further consideration as to whether this expectation of consultation prior to the making of regulations could be strengthened within the Bill.”⁷⁴

Meaning of public authority (section 30)

96. The definition of “public authority” in the Bill has been defined by reference to Devolved Welsh Authorities in section 157A of the 2006 Act, and various other

⁷² Welsh Government, Statement of Policy Intent, page 4

⁷³ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 11

⁷⁴ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 12

bodies in Schedule 7B to the Act. When we asked the Cabinet Secretary how did he decide which bodies should be caught by this definition, and why has it not been drafted by reference to any body providing functions of a public nature in Wales, he told us:

"The public authorities captured within the remit of the OEGW by the drafting approach are within the legislative scope of the Senedd, as far as possible. This is to minimise overlap and duplication with other organisations, such as the OEP, who will broadly be responsible for reserved authorities."

Some bodies providing functions of a public nature in Wales, such as the Ministry of Defence and the Crown Estate are reserved bodies therefore not subject to political oversight in the same way that authorities included within the scope of the OEGW will be.

*The OEP exists to broadly cover reserved authorities and, if any oversight gap were to arise, we consider these can be addressed through cooperation between the OEGW, the OEP, and the public authorities themselves."*⁷⁵

97. The majority of the public authorities under the Bill are listed in Schedule 9A to the 2006 Act as introduced by section 157A of that Act. However, under section 157A, there is also a statutory test for additional public bodies to constitute Devolved Welsh Authorities. As such, we asked the Cabinet Secretary to confirm that he is content that the scope of the definition of 'public authorities' under the Bill is sufficiently certain, and to what extent does he expect further public bodies to qualify as 'public authorities' under the statutory test. The Cabinet Secretary confirmed that he is content that the definition of public authorities is "sufficiently certain" and added:

"The advantage of this approach is that it is ambulatory in nature, and if any future bodies are added to the list in Schedule 9A or otherwise meet the conditions in subsection (2) of subsection 157A (that is, its functions are exercisable only in relation to Wales, and are wholly or mainly functions that do

⁷⁵ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 13

not relate to reserved matters), then they would be captured within the oversight of the OEGW.

We currently do not have an expectation of any further public bodies which may fall under the statutory test at 157A(2), however we consider it prudent to future proof the scope of the powers contained in the Bill.”⁷⁶

Our view

98. We welcome the Cabinet Secretary’s clarification surrounding the absence of an express provision confirming the OEGW’s independence. We are of the view that such a statement would be helpful and we recommend the Bill’s amendment in this regard.

Recommendation 6. The Bill should be amended to include provision which expressly confirms the independence from government of the Office of Environmental Governance Wales.

99. We welcome the fact that the Cabinet Secretary’s response confirms that the roles of OEGW’s chair and deputy chair will be added to the list of roles requiring a pre-appointment hearing at the Senedd. However, we note that the drafting of paragraph 8(2) of Schedule 1 to the Bill does not expressly provide that this is intended to be a role subject to a Senedd pre-appointment hearing.

100. As a matter of statutory interpretation, the duty to consult a Senedd committee could arguably be satisfied by seeking views in writing. As a point of principle and good law making, if a role is intended to be subject to a pre-appointment hearing, we would expect this to be reflected on the face of the legislation.

101. We recognise that the framework for pre-appointments operates outside this Bill. As such, we acknowledge that there may be unintended consequences if the Bill is amended in isolation.

Recommendation 7. We invite the Welsh Government to undertake an assessment of the broader pre-appointments regime with a view to better reflecting the operation of the regime on the face of primary legislation.

⁷⁶ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 14

102. While we are satisfied that the meaning of ‘public authority’ has legal certainty as drafted, we note that a governance gap remains because:

- the OEP covers reserved bodies subject to environmental law in England, but
- the OEGW will cover devolved Welsh authorities (and certain reserved authorities) subject to devolved environmental law.

103. This leaves a governance gap for reserved authorities (outside the OEGW’s jurisdiction) operating in Wales subject to devolved environmental law.

104. We are also concerned with the scope of the regulation-making power in section 29(4) of the Bill.

105. As acknowledged in the Welsh Government’s Statement of Policy Intent, if this power is exercised, it “would be considered to substantially affect provisions of the Bill by adding, amending or removing provision which can be considered ‘environmental law’ for the purposes of the Act”.

106. “Environmental law” is a fundamental definition in the Bill. It defines and informs the scope of the OEGW’s functions. As such, any amendment to the definition necessarily modifies and has a substantial bearing on the scope of the OEGW.

107. As drafted, we are concerned that the power provides too much discretion for the Welsh Ministers to determine whether a matter wholly or mainly relates to environmental protection. We do not consider that the Senedd’s approval procedure provides sufficient safeguards against the potential misuse of the power.

108. Notwithstanding this, we acknowledge that the power may be justified in principle. We note that there are benefits to removing ambiguity about whether certain provision comes under the definition, and to reflect court decisions on such matters.

Recommendation 8. The regulation-making power in section 29(4) of the Bill should be subject to an enhanced form of the Senedd’s approval procedure. In particular, the Bill should be amended to require mandatory consultation (including public consultation) and a longer laying period in the Senedd to allow sufficient time for meaningful scrutiny.

Part 3 – Biodiversity Targets, Etc.

Background

109. Part 3 of the Bill creates a framework for the Welsh Ministers to set, review, and report on targets to halt and reverse the decline in biodiversity in Wales. In the EM the Cabinet Secretary states:

“The overarching aim of this part of the Bill is to maintain and enhance biodiversity in Wales to help tackle the nature emergency. The Bill will amend the Environment (Wales) Act 2016 by introducing a biodiversity target setting framework, which will provide the Welsh Ministers with powers to set (and a duty to meet) biodiversity targets, alongside strengthening the existing planning, monitoring and reporting functions in section 6 of the Environment (Wales) Act 2016...”⁷⁷

110. Section 33 of the Bill (Biodiversity targets) inserts eight new sections (sections 6B, 6C, 6D, 6E, 6F, 6G, 6H and 6I) into the *Environment (Wales) Act 2016* (the 2016 Act) making provision for setting, reviewing and reporting on targets “to halt and reverse the decline in biodiversity in Wales”⁷⁸. A new section 6A (introduced by section 38 of the Bill) will also impose a duty on the Welsh Ministers to promote awareness in Wales of the importance of, and of the threats to, biodiversity.

111. The Statement of Policy Intent provides information about the wider biodiversity target setting framework, which imposes certain duties and restrictions as to how the Welsh Ministers may or must exercise their target-setting power.⁷⁹

112. New section 6B(1) of the 2016 Act states that the Welsh Ministers may by regulations set targets in respect of any matter relating to biodiversity in Wales. In the Statement of Policy Intent the Cabinet Secretary notes:

“Any regulations made under section 6B(1) will be subject to full consultation and impact assessments to ensure stakeholders' views, including those with protected characteristics who would be most affected by biodiversity loss, are considered in the

⁷⁷ EM, paragraph 3.30

⁷⁸ EM, Annex 1: Explanatory Notes to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, paragraph 164

⁷⁹ Welsh Government, Statement of Policy Intent, pages 5 to 8

development of the regulations. These regulations are also subject to the Senedd approval procedure.”⁸⁰

113. New section 6C(1) of the 2016 Act requires the Welsh Ministers to make regulations setting at least one target in respect of at least one matter within each of the four priority areas listed in new section 6C(2). Draft regulations setting such targets must be laid before the Senedd within three years of the date on which the Bill receives Royal Assent (new section 6C(5)).

Evidence from the Cabinet Secretary

General approach to biodiversity targets

114. As the biodiversity targets will be set out in regulations, we asked the Cabinet Secretary whether he considered this strikes the correct balance between providing sufficient detail on the face of the Bill and ensuring flexibility to assist delivery. The Cabinet Secretary responded:

“I think the balance is right here. I’m aware of some of the concerns about targets not being on the face of the Bill, but setting them out in the regulations I think is the right way forward. There’s a general power to set biodiversity targets in regulation, but the Bill also provides very clear direction for how the power will be used. For example, we can only set targets if they’ll contribute to that aim of halting and reversing the decline in biodiversity. The Bill also sets a duty on Welsh Ministers to set at least one target in each of the four priority areas on the face of the Bill that we consider address the most urgent issues required to tackle the nature emergency. And it’ll also provide detail of the attributes of the targets that will be set. So, we think we have got the balance right here, and it is something that we have engaged on, through the extensive consultation and stakeholder engagement, to get this right.

Part of this is also that element of making sure that we have some of the flexibility within this because targets may need to be reviewed from time to time. They could well be; you can anticipate they could be. Some of these targets will be enduring; they will be long term and enduring. On others we might find the evidence base has changed-and this is

⁸⁰ Welsh Government, Statement of Policy Intent, pages 7 and 8

important, by the way, for getting the targets right-but the evidence base may well change and we want to revisit and refresh and update or make more ambitious a particular target. This gives us the right way forward to do it in a more agile way. And just finally, Sam, the regulations, of course, will be subject to the Senedd approval procedure, so they give the Senedd an opportunity, then, to scrutinise these targets.”⁸¹

115. The Bill provides the Welsh Ministers with a regulation-making power to set targets in respect of ‘any matter’ relating to biodiversity in Wales. We asked the Cabinet Secretary to clarify the limits on the exercise of this power. He told us that the Bill contains “a number of limits on the exercise of this power”, adding:

“Targets can only be set if the Welsh Ministers are satisfied that the target will, if met, contribute to halting and reversing the decline in biodiversity in Wales, in particular through one or more of the following: increasing the abundance of native species, enhancing ecosystem resilience, or increasing genetic diversity.

There are also practical limits built into the target setting power. For example, each target must:

- *State an objectively measurable standard to be achieved,*
- *Be achievable (and the Welsh Ministers are under a duty to achieve them),*
- *And include a clear deadline for achievement.*

In addition, targets cannot be set under the priority area “reducing pollution” if they could also be set by the Welsh Ministers in air quality targets under the Environment (Air Quality and Soundscapes) (Wales) Act 2024, which is to avoid duplicating those powers.”⁸²

⁸¹ LJC Committee, 30 June 2025, RoP [121] and [122]

⁸² Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 15

Timing of biodiversity targets in priority areas

116. Under new section 6C, the Welsh Ministers must lay draft regulations which include biodiversity targets in priority areas within three years of the Bill receiving Royal Assent. We asked the Cabinet Secretary to clarify the justification for this timeline and asked whether it would be feasible to introduce draft regulations sooner. The Cabinet Secretary told us:

“We recognise the concerns raised regarding the timescales for setting biodiversity targets. However, as I raised with the CCEI committee, this is a complex and multistage process that necessarily takes time to ensure rigour and credibility. Work on target development is already progressing at pace alongside the Bill. That said, any significant acceleration may require compromises in the depth or breadth of target development.

A key component of the target development process is comprehensive scenario testing and modelling, which helps us evaluate different policy options and understand how varying environmental, social, and economic conditions could affect biodiversity outcomes. We have commissioned the Joint Nature Conservation Committee (JNCC) to undertake this modelling. Overall, this programme of work is expected to take 12 months, consisting of a series of successive work packages. These work packages will build upon subsequent outputs to deliver a final modelling output.

In addition to the modelling, we must also allow sufficient time for the secondary legislation process. This includes seeking independent advice, conducting integrated and regulatory impact assessments (including cost-benefit analysis), undertaking public consultation, drafting legislation, securing Senedd approval, and preparing detailed implementation guidance. Taking all of these factors into account—alongside the timing of the Senedd elections next year—we believe a three-year timeframe is realistic. This proposed timeline was also corroborated by the academic experts during the CCEI committee’s first evidence session.

However, we remain committed to bringing forward the regulations sooner if possible. Given the complexities and

dependencies involved, we would welcome the Committee's views, as I've welcomed views from the CCEI committee, on what they consider to be a realistic and achievable timeframe for laying the Regulations.”⁸³

Complying with the biodiversity targets

117. The express requirement to take action to contribute to meeting the biodiversity targets applies to public authorities that have been ‘designated’ in regulations by the Welsh Ministers. When we asked the Cabinet Secretary to explain why the Bill does not include a general duty on public authorities to comply with biodiversity targets he said:

“Under the proposed framework, the statutory duty to meet biodiversity targets will rest solely with the Welsh Ministers. However, the Bill provides a regulation-making power enabling the Welsh Ministers to designate specific public authorities to contribute to the achievement of particular targets. Public authorities in Wales are already subject to, and will remain subject to, the general biodiversity duty under section 6(1) of the Environment (Wales) Act 2016, which requires them to seek to maintain and enhance biodiversity and promote the resilience of ecosystems when exercising functions in Wales. The new duty to contribute is intended to complement this existing section 6 duty by providing a more targeted and outcome-focused mechanism for delivery. It is designed to offer greater clarity on the specific contributions that designated public authorities can make toward achieving biodiversity outcomes.

We have taken a proportionate and evidence-based approach to this power. Designation will only be considered where a public authority is well placed to make a meaningful contribution to a specific target through its existing functions. This approach recognises that not all targets will be relevant to all authorities—for example, a land locked local authority would not be expected to directly contribute to a marine biodiversity target. We have also been mindful of the operational pressures on public authorities and have reflected stakeholder feedback received through the White Paper consultation. We consider

⁸³ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 17

this targeted and flexible approach strikes an appropriate balance between the benefits to be gained from imposing a duty to contribute and imposing additional burdens on public authorities.”⁸⁴

118. Under new section 6E of the 2016 Act (to be inserted by the Bill), the Welsh Ministers are required to ensure the biodiversity targets are met. In responding to our question as to why the Bill does not impose an express duty on the OEGW to monitor and enforce this obligation, the Cabinet Secretary said:

“Schedule 2 to the Bill sets out key operational requirements for the OEGW, including the obligation to articulate within its strategy how, in carrying out its functions under section 11 (monitoring and reporting), it intends to monitor any environmental targets set by or under environmental law. The strategy is subject to public consultation, which introduces an important layer of transparency and accountability. However, to ensure the OEGW functions is a truly independent body, it must remain free from direction by the Welsh Ministers or any other party.

Statutory environmental targets are an important part of the legislative landscape, and we fully expect that the OEGW will wish to investigate and, if necessary, take enforcement action where concerns arise regarding their delivery. That said, we have been cautious not to prescribe how the OEGW should carry out its functions. As an independent body of experts, the OEGW is best placed to determine its own priorities. If it considers that any statutory targets, not just biodiversity targets, warrant focused attention, there is nothing in the legislation to prevent it from doing so. We believe this approach respects the principle of independence while ensuring the necessary powers and transparency are in place to support effective environmental governance.

Furthermore, we understand this approach to protect the independence of the body to select which statutory obligations it considers, in balance with its resourcing, was supported by the evidence given by the Office of Environmental Protection,

⁸⁴ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 19

Environmental Standards Scotland and the Interim Environmental Protection Assessor of Wales when they came before the CCEI committee earlier this month.

Aside from the OEGW, there are measures in the Bill to ensure that the Welsh Ministers are regularly monitoring and reporting on progress to achieving the target. For example, through the revised section 6 reports, which must be prepared every three years. If it appears to the Welsh Ministers that a target may not be met, then they must review that target (which includes seeking independent expert advice) and lay a statement before the Senedd noting its conclusions. This means progress towards achieving the targets will be a transparent process and open for Senedd scrutiny (proposed new section 6G)."⁸⁵

Robustness of the framework or delivery of the Bill's objectives

119. In our 9 July letter to the Cabinet Secretary we noted that the requirement to set biodiversity targets will fall to the Welsh Government in the seventh Senedd. As such, the biodiversity requirements in the Bill could be satisfied by the future Welsh Government laying regulations in 2029 which set only four targets without any requirement to designate any public authority in relation to such targets. We questioned the Cabinet Secretary on how this was a sufficiently robust legislative framework, to which he responded:

"... we are satisfied that the Bill is sufficiently robust. As well as the new biodiversity target framework, the Bill builds on and strengthens the Welsh Ministers' existing duties (and any public authorities designated to contribute to biodiversity targets) to better support efforts tackling the nature emergency in Wales. The biodiversity provisions are focused on establishing statutory targets that will drive action to halt and reverse biodiversity loss, helping to put nature on a path to recovery for the benefit of current and future generations. However, the Bill is only one element of the Welsh Government's approach for addressing the nature and climate emergencies. It should not be viewed in isolation, as it complements a wide range of existing policy and legislative measures.

⁸⁵ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 21

The target-making power in the Bill allows the Welsh Ministers to set biodiversity targets beyond those required for the identified priority areas, ensuring the framework remains responsive to emerging challenges. Given the difficulty in predicting all future drivers of biodiversity loss, this flexibility is essential to maintaining the Bill's long-term relevance. The Bill also includes provisions for reviewing targets to ensure they continue to support our overarching goal of halting and reversing biodiversity loss. Included in this mechanism is a requirement for the Welsh Ministers to set out how the targets, if achieved, will contribute to the halting and reversing of biodiversity loss. The UN's Global Biodiversity Framework, which has informed the development of the priority areas, is due to be reviewed in 2030. This will provide a timely opportunity to consider if further targets aligned with any new global priorities are needed.

While the Bill does not impose a duty to designate public authorities, the Welsh Ministers will be under a statutory duty to meet the targets they set. Coupled with the Bill's provisions surrounding monitoring and reporting on targets (discussed earlier), this creates a strong incentive to designate public authorities where they are well placed to contribute meaningfully to achieving targets. The need for collective action, combined with the statutory duty on Ministers, provides a clear mechanism for future governments to leverage the capabilities of public authorities in a proportionate and strategic way.”⁸⁶

Accessibility of Part 3 of the Bill

120. Sections 33 to 36 of the Bill make numerous amendments to section 6 of the 2016 Act. As a result, there is an argument that section 6 of that Act is made less accessible to the reader. For example, there are two separate definitions of ‘public authority’ in the same section for separate purposes, and separate duties for the Welsh Government and other public authorities in relation to the same section 6 plans and reports without clear headings. We asked the Cabinet Secretary if he was open to revisiting the amendments made by the Bill to section 6 of the 2016

⁸⁶ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 22

Act with a view to improving its accessibility and readability. The Cabinet Secretary responded:

“By incorporating the biodiversity target-setting framework into the Environment (Wales) Act 2016, we are ensuring that all primary legislation relating to biodiversity in Wales is consolidated within a single Act. We believe this approach improves accessibility and coherence, avoiding the need to navigate multiple legislative instruments.

Since the Environment (Wales) Act 2016 was enacted, the Senedd’s legislative competence has changed. This has influenced the drafting of the current Bill. For example, the definition of “public authority” in section 6(9) and (10) of the 2016 Act reflects the devolution settlement at that time. In contrast, the definition now included through section 34(4) of the Bill (the proposed new section 6(11) of the 2016 Act) reflects the Senedd’s current legislative competence.

Under the current devolution arrangements, certain public authorities—typically those operating across both England and Wales—are now classified as “reserved authorities.” In these cases, the Senedd requires Minister of the Crown consent to impose functions on such bodies. An example of a reserved authority is the Crown Estate. However, there are exceptions to this requirement.

Some reserved authorities, such as water and sewerage undertakers, listed in paragraph 9(6) of Schedule 7B to the Government of Wales Act 2006 do not require Minister of the Crown consent. Others, including the Food Standards Agency, Ofwat, and the Controller of Plant Variety Rights, do require consent, as the Senedd cannot create functions specifically exercisable in relation to them without it. All of these authorities are captured within the Bill’s definition of “public authority.”

The definition of “public authority” in the Bill also includes devolved Welsh authorities. Given the number of such bodies and the potential for organisational change—such as renaming, merging, or replacement—we considered it impractical to list each authority individually. Doing so would have resulted in a

lengthy and inflexible provision that would require frequent amendment.

We believe the approach taken in the Bill strikes an appropriate balance between clarity, functionality, and flexibility, particularly given the complexities involved. However, if the Committee wishes to propose an alternative approach that addresses these considerations more effectively, we would welcome the opportunity to consider it.”⁸⁷

Our view

121. In our view, the biodiversity target setting framework in Part 3 of the Bill is ill-conceived. We have reservations about the extent to which the targets will make a meaningful contribution towards achieving the aims they are attempting to pursue.

122. The Bill provides a wide discretion for the Welsh Ministers to set biodiversity targets. The Bill also places a requirement on the Welsh Ministers to set certain targets. However, we note that this duty is limited to bringing forward regulations by 2029 setting only four targets in priority areas without any requirements as to whether these should be short or long term targets.

123. We note that there is no overarching duty on any public authority to contribute towards achieving any targets set. Whilst a public authority may be designated in relation to a target (and thus be under a duty to contribute towards achieving such target), we note that there is no duty under the Bill to designate any public authority.

124. In addition to our reservations about the robustness of Part 3 of the Bill, we also have reservations about its accessibility. The Bill amends the 2016 Act to introduce a biodiversity target framework building on existing provision in section 6 of the Act. In our view, the amendments made to section 6 have affected its accessibility and readability. Whilst we do not consider that it crosses the threshold of being unclear or uncertain, it serves as an example of the potential pitfalls of inserting new substantive provision into existing provision. In particular, the different duties between the Welsh Ministers and public authorities in relation to their plans and reports; the two separate definitions of “public authorities” for

⁸⁷ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 September 2025, response to Question 16

the purposes of section 6; and the fact that only certain public authorities must take action to meet the targets.

125. More broadly, whilst acknowledging that it is not our function to comment on environmental policy, we are cognisant of the increasingly complex environmental legislative framework in Wales. We are concerned that the inclusion of biodiversity targets without further guidance and clarity from the Welsh Government adds to the complexity of that statutory framework and the task faced by public authorities who have to comply with the law in practice. This complexity and lack of clarity risks the outcomes that the Bill is seeking to achieve.



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet
dros Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for
Climate Change and Rural Affairs

Our ref: PO/HID/443/25

Mike Hedges MS
Legislation, Justice and Constitution
Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

12 September 2025

Dear Mike,

Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

Thank you for your letter of 9 July and further to our scrutiny session on the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill at the Committee session on the 30 June. I committed to provide further information as set out below.

Response to Para's 18 – 41 in the transcript

As I explained during my appearance before the committee, there are good reasons as to why we have prioritised other work first and we are now coming to this.

We have delivered on a number of high priority commitments relating to the environment since 2019. We acknowledge and recognise that we are behind the other UK nations in respect of establishing legislation to implement the environmental principles and governance body, but it must be recognised we are very much ahead in many other areas.

We have progressed legislation to address the legacy of disused dips in Wales, single use plastics and introduced new Clean Air legislation. We have progressed implementation of a new Net Zero target and set out a pathway to delivery. We have created new grants for nature restoration, radically redirected transport expenditure, made planning reforms, and have supported investments in meeting water quality targets.

We have rightly prioritised active reform to support the environment, and we accept this means we have not been able to implement supporting legislation to lock in and secure these essential reforms by strengthening our overarching governance framework until now.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

However, we consider this to be the right way to have sequenced these events. I'm certain the committee would not want to have seen important legislation on agricultural reform or air quality targets, which will have a direct effect on people's well-being, be delayed any further.

Response to Para 52 in the transcript

The Bill sets out detailed procedural requirements for the preparation and publication of the statement, or a revised statement, and requires the Welsh Ministers to consult NRW, the Future Generations Commissioner, the OEGW and such other persons as they consider appropriate

The Welsh Ministers must also lay before the Senedd a copy of the statement, or revised statement, and a document giving details of the consultation carried out and summarising the representations received and the Welsh Ministers' response to them. That is the method by which the Senedd will be able to scrutinise the statement or revised statement.

These provisions are sufficient to provide necessary transparency, accountability and engagement, in the Senedd and with others, and support the effective development of the statement.

We do not think it is necessary, or appropriate, to subject this statement to a specific Senedd procedure. The statement will be one of Welsh Government policy and guidance for NRW and other public authorities. The Welsh Ministers, NRW and certain public authorities will be required to "have regard" to the statement, or to guidance in the statement, in complying with their duties under Part 1 of the Bill to apply the principles and integrate environmental protection. Typically, other forms of statutory guidance are not subject to parliamentary scrutiny, for example statutory guidance under the Well-being of Future Generations (Wales) Act 2015 (sections 14, 22(2) and 51).

Nevertheless, I would be interested in hearing the Committee's views on how a Senedd process for the statement might work. However, I would also caution that any additional requirements could result in delays to the Welsh Government's ability to finalise and publish the statement before the provisions are commenced, which is currently to be six months following royal assent. If further processes and procedures are added, this timescale may need to be extended to compensate.

Response to Para 81 in the transcript

The Bill provides that commencement of some provisions to establish the OEGW will be at the end of the period of two months beginning with the day on which this Act receives Royal Assent (for example recruitment and development of a strategy). Remaining provisions will be commenced by order to allow the Body to reach full operating capacity before duties and obligations are placed upon it.

The body will take time to become fully operational and it is not uncommon for this to take around 18-24 months from the date of the legislation receiving royal assent.

It is extremely important that we allow the OEGW this time to get established. There is a necessary sequence that requires the Chair, Board and CEO to be appointed before any substantive decisions or plans around the structure of the OEGW can be agreed. This process itself can take up to 12 months. One of the core tenets of this body is its independence, and if Welsh Government were to become involved in preparing its strategy, establishing its internal policy and practices, and / or recruiting its executive staff, it would clearly undermine this independence before it gets started.

After the board and core executive staff are recruited, the OEGW will need to develop, consult upon, and publish its strategy. This is an important document which details to the public how the OEGW will undertake its functions. It will be foundational towards the OEGW's operating practices and it's important that room is given to develop this in consultation with stakeholders and the public.

By way of comparison, the ESS was established with a full Board which was directly appointed by Scottish Ministers in October 2021. It launched its consultation on its full strategic plan in May 2022 and it was approved in November 2022. As you can see, this process took 12 months to complete.

Alongside this, the OEGW will need to recruit staff up to its full complement. Again, it is important the OEGW makes the decisions around its executive staff to ensure there is no question as to their independence from the public authorities that are being overseen, which includes Welsh Ministers.

Despite these requirements, we are already exploring opportunities to speed up this process, alongside wider benefits like sharing back-office functions across multiple public authorities, such as the disused tips authority.

Response to Para 101 in the transcript

During my appearance at the committee I explained our intention around including "at any time" within Section 15 of the Bill, which is to allow for representations to be made about alleged failures that may have been made in the past (and may only recently have come to light) and to ensure there is no gap between the IEPAW and the new Body.

However, if an investigation concluded that a failure to comply is no longer ongoing then the OEGW will not be able to issue a compliance notice. In other words, the non-compliance with environmental law **must** be ongoing at the time the notice is issued. It is our view a failure to comply with environmental law could include a failure to deal with the consequences of an earlier breach where the requirement to remedy is on the statute book.

The consequences of a failure to remedy the harm caused by a breach of the law will continue to be dealt with via the existing regulatory regime (if the harm is caused by an individual or private company).

It is also important that we do not conflate the role of the OEGW with those of regulatory authorities. The OEGW is a strategic oversight body, responsible for overseeing compliance with, and the effectiveness of, environmental law. There is a clear separation between existing regulatory bodies and the governance body, enabling the OEGW to focus on monitoring and enforcing compliance with environmental law without becoming involved in the decision-making processes of other regulatory bodies, such as those responsible for planning and licensing.

Where the public authority is responsible in law for remedying harm caused by a breach then the OEGW will be able to take action in this respect against the Public Authority if they determined the failure to remedy the harm was a breach in itself (as the need to remedy would likely be considered environmental law).

Where the need to remedy is not enshrined in law then the guidance and advice functions of the OEGW could be relied upon or an improvement report could be issued.

As discussed at committee, the Bill does not set out how far back the OEGW could go when investigating breaches. The legislation does not provide such a timeframe, and it will be for the OEGW to determine what is appropriate and reasonable in the circumstances.

It should be borne in mind that the regulatory regime continues to sit with the existing regulatory bodies and the OEGW will have oversight more generally. So, for example, if a public authority continually fails to use its enforcement powers (many of which are discretionary) the OEGW may choose to investigate and take action using the mechanisms other than compliance notice available in the Bill, such as advice or improvement reports.

Response to Para 126 in the transcript

See diagram in Annex 2

I have also provided the additional information the Committee has requested in Annex 1

Your sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Huw Irranca-Davies'.

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig

Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Annex: Response to Legislation, Justice and Constitution Committee’s further evidence questions on the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill – July 2025

1. In our report on the Environment Bill LCM in September 2021, we recommended that: “A future environmental Bill introduced by the Minister should address devolved issues contained within the UK Government’s Environment Bill, following appropriate consultation with stakeholders.” The Welsh Government accepted this recommendation in principle. Please can you explain if the Bill addresses the recommendation in our 2021 report and if so, how?

In her [response](#) to your 2021 report, the then Minister for Climate Change stated that “Tackling the climate and nature emergencies are a priority for this Government”, and this remains the case.

Since that time, significant policy initiatives, including primary legislation, have been brought forward to reflect this priority alongside broader responsibilities for sustainable management of natural resources and the protection of public health. This includes, but is not limited to, the Agriculture (Wales) Act 2023, the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 and the Environment (Air Quality and Soundscapes) (Wales) Act 2024.

The addition of our Bill to this legislative landscape will further support and ‘lock in’ the environmental, health and economic outcomes associated with this policy and legislation. It will achieve this by

- a. making provision about environmental principles and the integration of environmental protection,
- b. introducing an independent oversight body with teeth to oversee environmental law, and
- c. introducing a biodiversity targets framework.

Part 1 of the Bill establishes an environmental objective and makes provision requiring the Welsh Ministers, NRW and certain public authorities to apply environmental principles and to integrate environmental protection.

The establishment of the OEGW in Part 2 will be instrumental in identifying deficiencies and improving accessibility of environmental law, along the lines suggested within your recommendation.

Furthermore, we have recognised that the provisions around the biodiversity targets framework support the delivery of outcomes associated with the Environment (Wales) Act 2016. That is why these new provisions will be incorporated within that Act, providing for a complimentary and holistic approach to biodiversity that also improves accessibility.

This term we have focussed on environmental outcomes which address your recommendation in part, and in principle. We are, however, giving thought to

legislation for the next term focussed on correcting deficiencies, consolidating provisions and improving accessibility and systems in environmental law.

2. Please explain how the duty to have special regard to the principles will work in practice. For example, what processes will be put in place by the Welsh Government to identify policy that has, or could have any effect on the environment, and how will Welsh Ministers go about having special regard to the principles?

The duty placed on the Welsh Ministers and NRW to have special regard to the principles, and to integrate environment protection, applies when making policy in relation to Wales that has, or could have, any effect on the environment.

This is a strong requirement to have special regard to the principles and to integrate environmental protection and, as described in the explanatory memorandum, requires the Welsh Ministers and NRW to give ‘considerable importance and weight’ to the principles when making policy. The duty applies broadly across the full range of Welsh Government policy making, not just environmental policy.

The “special regard” duty ensures that environmental principles feature prominently in decision-making, whilst also enabling the Welsh Ministers to balance the environmental principles with other relevant considerations (e.g. public health, costs) depending on the context.

This is a stronger and more onerous obligation than “due regard” or “have regard”.

Given the effect of the duty, it is important that the scope of the duty is clear. This is achieved by clarifying that the duty applies whenever a policy has, or could have, any effect on the environment.

It would not make sense to apply the duty when making policy if there is no effect on the environment, as considerable importance and weight to the environmental principles could not be given when there is no environmental impact.

That is why the legislation makes clear that in the specific case where a policy has no impact on the environment, which is considered likely to be rare, there is no requirement to apply the duty.

In practical terms, there are very few policies which would not have any effect whatsoever on the environment – for example, the vast majority of transport policy would do so. However, in a small number of cases where policy making has no impact on the environment, it would not be appropriate to apply the principles.

The duty applies throughout the policy making process and will be applied on a case-by-case basis. Policy making will be supported by the environmental principles and integrating environmental protection statement, which will explain (amongst other things) how the Welsh Ministers will comply with the duty, and also by internal guidance, training and policy toolkits.

3. Under section 5 of the Bill, public authorities must have regard to the environmental principles when undertaking strategic environmental assessments. What accountability mechanisms are in the Bill to monitor whether public authorities comply with this duty?

As I explained in my response to the CCEI Committee's letter, the principles duties imposed on the Welsh Ministers, NRW and certain other public authorities are strong and clear. In our view, they clearly form part of the environmental law which will be overseen by the OEGW.

If for whatever reason it is considered that the Welsh Ministers, NRW or public authorities are failing to comply with these requirements, this would be a matter for the OEGW to consider and, if necessary, investigate, monitor and potentially take enforcement action against the relevant authority.

4. The Green Alliance has suggested that the Bill should be amended:
i. to include a duty on Welsh Ministers to respect the OEGW's independence (see paragraph 17 of Schedule 1 of the UK Environment Act 2021).
ii. to clarify that Welsh Ministers have no power of direction in relation to the OEGW (akin to paragraph 1 of Schedule 1 to the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.)

What is your view of these suggestions and please can you explain why you disagree with them, should that be the case?

- i. We do not consider it necessary to include this statement. The Bill already provides for the OEGW's independence and a statement along these lines would not change the effect of the Bill as we consider the detailed practical measures we've put in place throughout the Bill demonstrate and make effective the independence of the OEGW. Furthermore, it should be noted that the Secretary of State has more functions to exercise in relation to the Office of Environmental Protection (OEP) when compared with the functions the WMs will exercise in relation to the OEGW. For example, the SoS has power to provide guidance to the OEP on their enforcement action, to which the OEP must then "have regard". In our view this leads to a stronger argument for the inclusion of a statement on the independence from the ministers in a UK context, due to the number of powers the SoS has in respect of the OEP, rather than the way in which the Welsh Bill has been drafted which already significantly limits the powers Welsh Ministers have in respect of the OEGW. Nevertheless, we recognise that a declamatory statement affirming the OEGW's independence, as provided for in the Bill already, can sometimes be helpful and would welcome the committee's views on this to inform our thinking going forward.
- ii. As with question (i), we do not consider it is necessary to make express provision that the WMs have no power of direction. This is the effect of the

Bill in any event. The Bill deliberately does not provide any power of direction for the Welsh Ministers in respect of the OEGW and we do not consider such a power could be implied. Further, there are instances where the Welsh Ministers have been given a power to direct. For example, The Natural Resources Body for Wales (Establishment) Order 2012 specifically allows the Welsh Ministers to give directions to NRW about the exercise of its functions. Welsh Ministers cannot tell the OEGW what to do (or what not to do) because there is no provision to enable them to do so. We, therefore, consider it would be unnecessary to clarify that WMs have no power of direction in relation to the OEGW on the face of the Bill.

5. The Welsh Ministers must consult a Senedd committee before appointing the OEGW's chair and deputy chair (paragraph 8(2) of Schedule 1). If this is intended to be a pre-appointment hearing, why does it not state that on the face of the Bill, and do you intend to add these roles to the list of offices subject to pre-appointment hearings under the protocol agreed between the Llywydd and the Welsh Government?

This consultation requirement fulfils a similar role to the pre-appointment hearing procedure in place for other significant public roles, such as the Well-being of Future Generations Commissioner and the Chair of Natural Resources Wales.

The committee should note the language used is similar to s17(3) of the Well-being of Future Generations (Wales) Act 2015, which does not state a 'pre-appointment hearing' must take place but places a clear requirement on Welsh Ministers to consult the relevant committee.

It is our intention to add these roles to the list of offices subject to pre-appointment hearings under the protocol.

As the Well Being of Future Generations (Wales) Act 2015 does not use the specific wording of "pre-appointment hearing", we would appreciate any further thoughts from the committee if they consider this specific wording is necessary in this Bill.

6. The OEGW may apply to the High Court for an order requiring a public authority to take any action specified in a compliance notice it has issued. What are the possible sanctions for public authorities if they fail to comply with a High Court order?

The initial referral to the court provides for the court to enforce the Compliance Notice by way of Court Order (and the Court can vary the Compliance Notice itself if they see fit or indeed choose to not make a Court Order).

If the Public Authority, then fails to comply with the Court Order enforcing the Compliance Notice, then either an application can be made to the Court to find the

Public Authority in contempt of court, or the Court may decide to instigate these proceedings itself.

There are a range of sanctions available on a finding of contempt of court which would then be available to the Court, which include financial penalties.

7. Environmental law is a key definition in the Bill. It covers legislation wholly or mainly relating to environmental protection that has been, or could be, made by the Senedd. Do international conventions and agreements on the environment fall within the definition of ‘environmental law’ under the Bill?

The Bill includes a definition of “environmental law” to provide clarity, as the OEGW’s functions depend upon public authorities complying with “environmental law” and how well this law is made, implemented and applied.

Notably the definition clarifies that environmental law only relates to “devolved provision”. This has been framed to capture any future changes and also ensure there is limited overlap with the functions of the OEP.

The definition states that "environmental law" involves any devolved provision that "wholly or mainly relates to environmental protection." This means specific provisions or functions within an enactment may qualify, even if the entire Act does not.

Within that context, the OEGW’s remit applies to environmental law which is devolved and wholly or mainly relates to environmental protection. This applies to international obligations where the policy is devolved.

For example, the Aarhus convention is a legally binding international treaty that has been ratified by the UK and establishes three core procedural environmental rights:

- Access to environmental information
- Public participation in environmental decision-making
- Access to justice in environmental matters

In terms of the application of these core rights in Wales and where it is within the legislative competence of the Senedd, and therefore a devolved provision, then the OEGW will have oversight of these matters. It will be the OEGW itself who determines, case-by-case, whether legislative provision in their view falls under this definition. The OEGW would therefore first need to establish whether this falls within the scope of environmental law and then, if so, be able to assess its effectiveness and any non-compliance.

Generally, we expect this would be straightforward, but, as with all legislative terminology, in time, and with an evolving legislative landscape on this subject matter, the courts may need to resolve any disputes about the interpretation of “environmental law” as defined in the Bill.

8. In exercising its functions, the OEGW will be required to determine on a case by case basis whether legislation constitutes environmental law under

the Bill. Are you confident that this is workable and feasible in practice? For example, is it reasonable to expect the OEGW to enforce the law and potentially escalate it to the High Court on the basis of its own assessment of whether a provision is within the Senedd's legislative competence under section 29(3)(b) of the Bill?

We have no concerns about the feasibility and practicability of expecting the OEGW to use its functions and enforce the provisions. The environment is largely a devolved area and has been for some time so there is generally a good understanding of what is devolved. As mentioned in my answer to the question above, we expected the OEGW's assessment of whether provisions falls within the scope of environmental law would be straightforward (though recognise this could change with an evolving legislative landscape).

Further, the OEGW's Board will be comprised of expertise which includes knowledge and awareness of environmental law and policy in the context of the Bill, and this meaning of environmental law is expressly tied to devolved provision.

Further it is expected, although not specifically provided for in the Bill, that the OEGW will seek access to legal advice for such matters given the wide range of enforcement powers made available to them, as other public authorities do.

The EA 2021 also contains reference to devolved provision, so the same issue arises in respect of the OEP.

9. The Statement of Policy Intent ("SOPI") for the subordinate legislation powers under the Bill states that in instances of uncertainty or disagreement, it may be necessary for the courts to ultimately decide whether provision constitutes 'environmental law'. What assessment has been made of the impact of this on the justice system?

We are confident the definition of environmental law is sufficiently clear and have given specific examples within the explanatory memorandum.

[The Justice System Impact Identification Assessment](#), agreed with MoJ, reflects our view that there will be negligible impact on the justice system. Referrals to the court, including around whether a provision constitutes environmental law, are intended to be made as an option of last resort once all other methods to address a failure has been explored, including informal resolution (advice and guidance), information notices and compliance notices, as well as improvement reports.

10. The Welsh Ministers have a power under section 29(4) of the Bill to make regulations specifying whether provision is, or is not, within the definition of 'environmental law'. Please explain why this power is necessary, and whether you intend to routinely use it to identify which legislation, or parts of legislation, constitute 'environmental law'.

We have included a definition for “environmental law” to provide greater clarity. Arguments around what would and wouldn’t fit into the scope of environmental law can be broad and complex, covering areas like air quality, water, waste, biodiversity, and more.

The purpose of section 29(4) is to provide Welsh Ministers, subject to the Senedd approval procedure, a mechanism to update the definition of environmental law without needing to amend the primary legislation each time, where there is clear justification for doing so.

This will enable the Act to be futureproofed for an evolving legislative landscape and as this will be subject to Senedd approval and formal consultation in respect of secondary legislation. It is not something Welsh Ministers could do unilaterally, nor expect to use routinely. Notably, this power could also be used to reflect the circumstances covered by question 9: namely to reflect the findings of the court.

11. The SOPI states that, if exercised, the power in section 29(4) of the Bill would be considered to “substantially affect provisions of the Bill by adding, amending or removing provisions which can be considered ‘environmental law’ for the purposes of the Act, and which has a substantial bearing on the scope of the Office of Environmental Governance’s oversight powers”. To what extent could this power be used to exclude provision that currently falls under the definition of ‘environmental law’ as drafted under the Bill?

The power could be used to exclude existing provision that has been considered environmental law prior to that point as the power is, deliberately, fairly broad and says the Welsh Ministers can provide that a devolved provision is, or is not, within the definition of environmental law.

As per the responses in question 9 and 10, this may be required or beneficial to reflect the findings of the court if there was any challenge around the scope of environmental law. It is worth reiterating, however, that the power is subject to the Senedd approval procedure and again, cannot be used unilaterally by Welsh Ministers.

12. Why is there no duty to consult the OEGW in relation to regulations to be made under section 29(4)?

Welsh Ministers are committed to consult on secondary legislation unless it is technical or not making substantial amendments.

We are aware the commitment of the Welsh Government to consult prior to making secondary legislation is one made by the existing Welsh Government and is not a statutory duty on them. We are giving further consideration as to whether this expectation of consultation prior to the making of regulations could be strengthened within the Bill.

13. The definition of ‘public authority’ in the Bill has been defined by reference to Devolved Welsh Authorities in section 157A of the Government

of Wales Act 2006, and various other bodies in Schedule 7B to the Act. How did you decide which bodies should be caught under this definition, and why has it not been drafted by reference to any body providing functions of a public nature in Wales?

The public authorities captured within the remit of the OEGW by the drafting approach are within the legislative scope of the Senedd, as far as possible. This is to minimise overlap and duplication with other organisations, such as the OEP, who will broadly be responsible for reserved authorities.

Some bodies providing functions of a public nature in Wales, such as the Ministry of Defence and the Crown Estate are reserved bodies therefore not subject to political oversight in the same way that authorities included within the scope of the OEGW will be.

The OEP exists to broadly cover reserved authorities and, if any oversight gap were to arise, we consider these can be addressed through cooperation between the OEGW, the OEP, and the public authorities themselves.

14. The majority of the public authorities under the Bill are listed in Schedule 9A to the Government of Wales Act 2006 as introduced by section 157A. However, under section 157A, there is also a statutory test for additional public bodies to constitute Devolved Welsh Authorities. Therefore, are you content that the scope of the definition of ‘public authorities’ under the Bill is sufficiently certain, and to what extent do you expect further public bodies to qualify as ‘public authorities’ under the statutory test?

Yes, we are content that the definition of “public authorities” is sufficiently certain. The advantage of this approach is that it is ambulatory in nature, and if any future bodies are added to the list in Schedule 9A or otherwise meet the conditions in subsection (2) of subsection 157A (that is, its functions are exercisable only in relation to Wales, and are wholly or mainly functions that do not relate to reserved matters), then they would be captured within the oversight of the OEGW.

We currently do not have an expectation of any further public bodies which may fall under the statutory test at 157A(2), however we consider it prudent to future proof the scope of the powers contained in the Bill.

15. The Welsh Ministers have a power to set targets in respect of ‘any matter’ relating to biodiversity in Wales. Objectively, this is a very wide power. What are the limits on the exercise of this power?

The Bill contains a number of limits on the exercise of this power. Targets can only be set if the Welsh Ministers are satisfied that the target will, if met, contribute to halting and reversing the decline in biodiversity in Wales, in particular through one or more of the following: increasing the abundance of native species, enhancing ecosystem resilience, or increasing genetic diversity.

There are also practical limits built into the target setting power. For example, each target must:

- State an objectively measurable standard to be achieved,
- Be achievable (and the Welsh Ministers are under a duty to achieve them),
- And include a clear deadline for achievement.

In addition, targets cannot be set under the priority area “reducing pollution” if they could also be set by the Welsh Ministers in air quality targets under the Environment (Air Quality and Soundscapes) (Wales) Act 2024, which is to avoid duplicating those powers.

16. The numerous amendments made to section 6 of the Environment (Wales) Act 2016 by sections 33-36 of the Bill have arguably made it less accessible to the reader. There are two separate definitions of ‘public authority’ in the same section for separate purposes, and separate duties for the Welsh Government and other public authorities in relation to the same section 6 plans and reports without clear headings. Are you open to revisiting the amendments made by the Bill to section 6 of the 2016 Act with a view to improving its accessibility and readability?

By incorporating the biodiversity target-setting framework into the Environment (Wales) Act 2016, we are ensuring that all primary legislation relating to biodiversity in Wales is consolidated within a single Act. We believe this approach improves accessibility and coherence, avoiding the need to navigate multiple legislative instruments.

Since the Environment (Wales) Act 2016 was enacted, the Senedd’s legislative competence has changed. This has influenced the drafting of the current Bill. For example, the definition of “public authority” in section 6(9) and (10) of the 2016 Act reflects the devolution settlement at that time. In contrast, the definition now included through section 34(4) of the Bill (the proposed new section 6(11) of the 2016 Act) reflects the Senedd’s current legislative competence.

Under the current devolution arrangements, certain public authorities—typically those operating across both England and Wales—are now classified as “reserved authorities.” In these cases, the Senedd requires Minister of the Crown consent to impose functions on such bodies. An example of a reserved authority is the Crown Estate. However, there are exceptions to this requirement.

Some reserved authorities, such as water and sewerage undertakers, listed in paragraph 9(6) of Schedule 7B to the Government of Wales Act 2006 do not require Minister of the Crown consent. Others, including the Food Standards Agency, Ofwat, and the Controller of Plant Variety Rights, do require consent, as the Senedd cannot create functions specifically exercisable in relation to them without it. All of these authorities are captured within the Bill’s definition of “public authority.”

The definition of “public authority” in the Bill also includes devolved Welsh authorities. Given the number of such bodies and the potential for organisational change—such as renaming, merging, or replacement—we considered it impractical to list each authority individually. Doing so would have resulted in a lengthy and inflexible provision that would require frequent amendment.

We believe the approach taken in the Bill strikes an appropriate balance between clarity, functionality, and flexibility, particularly given the complexities involved. However, if the Committee wishes to propose an alternative approach that addresses these considerations more effectively, we would welcome the opportunity to consider it.

17. Under new section 6C, the Welsh Ministers must lay draft regulations with biodiversity targets in priority areas within three years of Royal Assent. The Senedd’s Climate Change, Environment and Infrastructure Committee previously described this proposed timescale as “not acceptable” and “deeply concerning”. What is the justification for this deadline?

18. Would it be feasible to introduce draft regulations with targets sooner than this, and would you consider amendments to that effect at stage 2

We recognise the concerns raised regarding the timescales for setting biodiversity targets. However, as I raised with the CCEI committee, this is a complex and multi-stage process that necessarily takes time to ensure rigour and credibility. Work on target development is already progressing at pace alongside the Bill. That said, any significant acceleration may require compromises in the depth or breadth of target development.

A key component of the target development process is comprehensive scenario testing and modelling, which helps us evaluate different policy options and understand how varying environmental, social, and economic conditions could affect biodiversity outcomes. We have commissioned the Joint Nature Conservation Committee (JNCC) to undertake this modelling. Overall, this programme of work is expected to take 12 months, consisting of a series of successive work packages. These work packages will build upon subsequent outputs to deliver a final modelling output.

In addition to the modelling, we must also allow sufficient time for the secondary legislation process. This includes seeking independent advice, conducting integrated and regulatory impact assessments (including cost-benefit analysis), undertaking public consultation, drafting legislation, securing Senedd approval, and preparing detailed implementation guidance. Taking all of these factors into account—alongside the timing of the Senedd elections next year—we believe a three-year timeframe is realistic. This proposed timeline was also corroborated by the academic experts during the CCEI committee’s first evidence session.

However, we remain committed to bringing forward the regulations sooner if possible. Given the complexities and dependencies involved, we would welcome the Committee’s views, as I’ve welcomed views from the CCEI committee, on what they consider to be a realistic and achievable timeframe for laying the Regulations.

19. The express requirement to take action to contribute to meeting the biodiversity targets applies to public authorities that have been ‘designated’ in regulations by the Welsh Ministers. Why does the Bill not include a general duty on public authorities to comply with biodiversity targets?

Under the proposed framework, the statutory duty to meet biodiversity targets will rest solely with the Welsh Ministers. However, the Bill provides a regulation-making power enabling the Welsh Ministers to designate specific public authorities to contribute to the achievement of particular targets. Public authorities in Wales are already subject to, and will remain subject to, the general biodiversity duty under section 6(1) of the Environment (Wales) Act 2016, which requires them to seek to maintain and enhance biodiversity and promote the resilience of ecosystems when exercising functions in Wales. The new duty to contribute is intended to complement this existing section 6 duty by providing a more targeted and outcome-focused mechanism for delivery. It is designed to offer greater clarity on the specific contributions that designated public authorities can make toward achieving biodiversity outcomes.

We have taken a proportionate and evidence-based approach to this power. Designation will only be considered where a public authority is well placed to make a meaningful contribution to a specific target through its existing functions. This approach recognises that not all targets will be relevant to all authorities—for example, a land locked local authority would not be expected to directly contribute to a marine biodiversity target. We have also been mindful of the operational pressures on public authorities and have reflected stakeholder feedback received through the White Paper consultation. We consider this targeted and flexible approach strikes an appropriate balance between the benefits to be gained from imposing a duty to contribute and imposing additional burdens on public authorities.

20. Each public authority proposed for designation must be consulted, along with such other persons considered appropriate by Welsh Ministers. Up to 100 public bodies constitute ‘public authorities’ under the Bill. What proportion of these bodies do you envisage being designated?

It is important to emphasise that we will not know which public authorities are best placed to contribute—nor the proportion that may be designated—until the targets themselves have been developed in detail. Each target will have distinct delivery requirements, and the relevance of individual public authorities will vary accordingly.

For example, targets that require land or ecosystem management are likely to involve consultation with authorities that own or manage land, such as local and national park authorities, water and sewerage undertakers, Natural Resources Wales, Sport Wales, CADW, and Transport for Wales. Further work during the target development phase will provide greater clarity on which public authorities can meaningfully contribute to each target. We are committed to consulting

relevant public authorities as part of the designation process to ensure that any duties imposed are proportionate, targeted, and aligned with existing functions.

21. Under the Bill, the Welsh Ministers are required to ensure the biodiversity targets are met. Why does the Bill not impose an express duty on the OEGW to monitor and enforce this obligation?

Schedule 2 to the Bill sets out key operational requirements for the OEGW, including the obligation to articulate within its strategy how, in carrying out its functions under section 11 (monitoring and reporting), it intends to monitor any environmental targets set by or under environmental law. The strategy is subject to public consultation, which introduces an important layer of transparency and accountability. However, to ensure the OEGW functions as a truly independent body, it must remain free from direction by the Welsh Ministers or any other party.

Statutory environmental targets are an important part of the legislative landscape, and we fully expect that the OEGW will wish to investigate and, if necessary, take enforcement action where concerns arise regarding their delivery. That said, we have been cautious not to prescribe how the OEGW should carry out its functions. As an independent body of experts, the OEGW is best placed to determine its own priorities. If it considers that any statutory targets, not just biodiversity targets, warrant focused attention, there is nothing in the legislation to prevent it from doing so. We believe this approach respects the principle of independence while ensuring the necessary powers and transparency are in place to support effective environmental governance.

Furthermore, we understand this approach to protect the independence of the body to select which statutory obligations it considers, in balance with its resourcing, was supported by the evidence given by the Office of Environmental Protection, Environmental Standards Scotland and the Interim Environmental Protection Assessor of Wales when they came before the CCEI committee earlier this month.

Aside from the OEGW, there are measures in the Bill to ensure that the Welsh Ministers are regularly monitoring and reporting on progress to achieving the target. For example, through the revised section 6 reports, which must be prepared every three years. If it appears to the Welsh Ministers that a target may not be met, then they must review that target (which includes seeking independent expert advice) and lay a statement before the Senedd noting its conclusions. This means progress towards achieving the targets will be a transparent process and open for Senedd scrutiny (proposed new section 6G).

22. The requirement to set biodiversity targets will fall to the Welsh Government in the seventh Senedd. As drafted, the biodiversity requirements in the Bill could be satisfied by laying regulations in 2029 setting only four targets without any requirement to designate any public authority in relation to such targets. Are you satisfied that this is sufficiently robust, and if so, why?

Yes, we are satisfied that the Bill is sufficiently robust. As well as the new biodiversity target framework, the Bill builds on and strengthens the Welsh Ministers' existing duties (and any public authorities designated to contribute to biodiversity targets) to better support efforts tackling the nature emergency in Wales. The biodiversity provisions are focused on establishing statutory targets that will drive action to halt and reverse biodiversity loss, helping to put nature on a path to recovery for the benefit of current and future generations. However, the Bill is only one element of the Welsh Government's approach for addressing the nature and climate emergencies. It should not be viewed in isolation, as it complements a wide range of existing policy and legislative measures.

The target-making power in the Bill allows the Welsh Ministers to set biodiversity targets beyond those required for the identified priority areas, ensuring the framework remains responsive to emerging challenges. Given the difficulty in predicting all future drivers of biodiversity loss, this flexibility is essential to maintaining the Bill's long-term relevance. The Bill also includes provisions for reviewing targets to ensure they continue to support our overarching goal of halting and reversing biodiversity loss. Included in this mechanism is a requirement for the Welsh Ministers to set out how the targets, if achieved, will contribute to the halting and reversing of biodiversity loss. The UN's Global Biodiversity Framework, which has informed the development of the priority areas, is due to be reviewed in 2030. This will provide a timely opportunity to consider if further targets aligned with any new global priorities are needed.

While the Bill does not impose a duty to designate public authorities, the Welsh Ministers will be under a statutory duty to meet the targets they set. Coupled with the Bill's provisions surrounding monitoring and reporting on targets (discussed earlier), this creates a strong incentive to designate public authorities where they are well placed to contribute meaningfully to achieving targets. The need for collective action, combined with the statutory duty on Ministers, provides a clear mechanism for future governments to leverage the capabilities of public authorities in a proportionate and strategic way.

23. The Explanatory Memorandum states that the Bill will help to implement the commitments set out in the UK-EU Trade and Cooperation Agreement. Please elaborate and explain how the Bill will do this

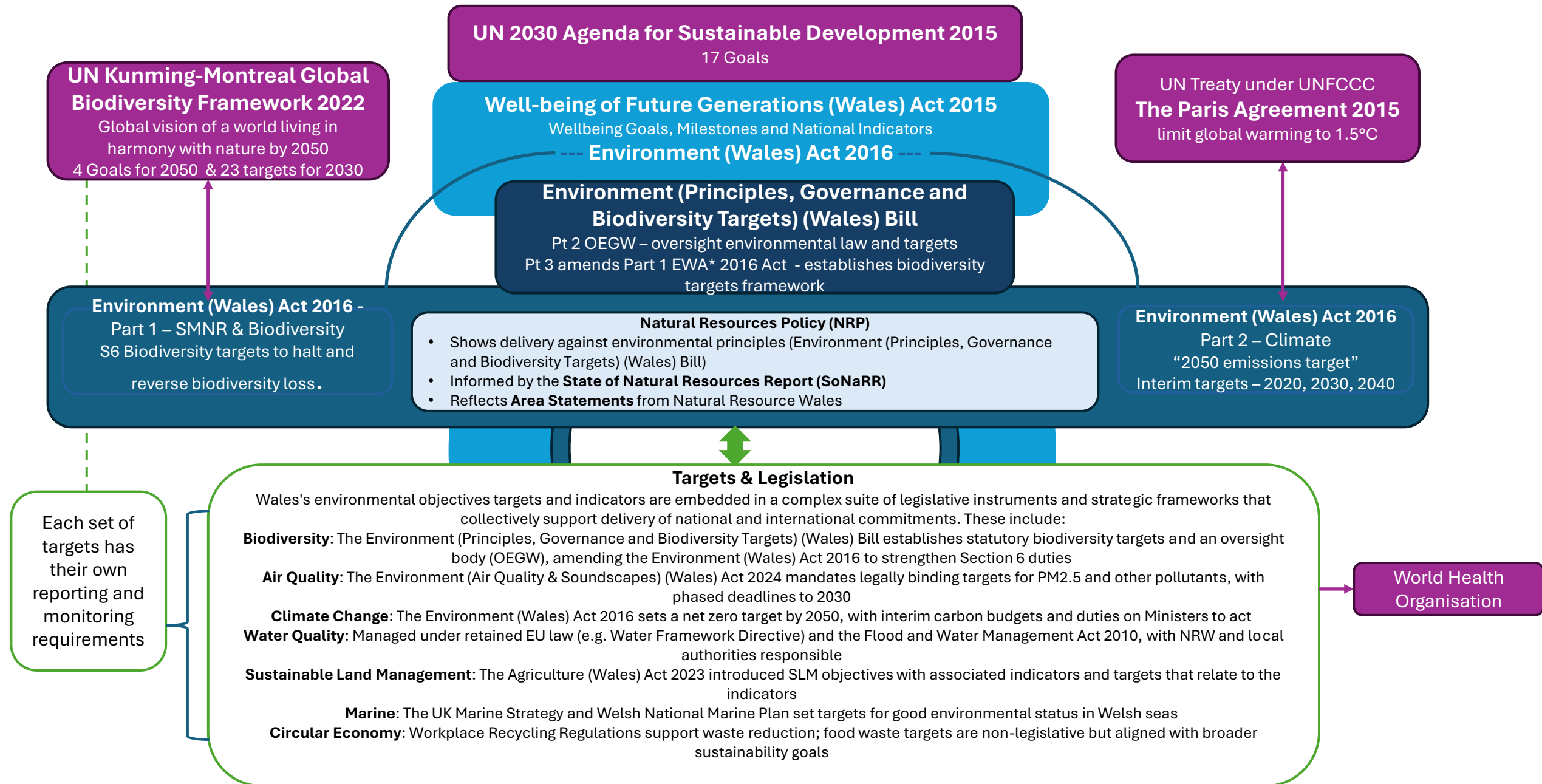
The pre-amble of the UK-EU Trade and Cooperation Agreement (the "TCA") acknowledges the parties' commitment to high standards of environmental protection (and to strive to continue to improve those standards) and the fight against climate change. Provision relevant to the environment can be found throughout the TCA on a wide range of areas, including climate change, air quality, water quality, and biodiversity. In this respect, the intended policy outcomes for this Bill supports these commitments. For example, the environmental objective guides the principles and the OEGW to contribute to the "attainment of a high level of environmental protection and an improvement of the environment". The OEGW could also choose to review whether Welsh Ministers have addressed the duty to have special regard to the environmental principles.

Part 2, Heading 1, Title XI, Chapter 7 of the TCA makes particular provision about the environment. Each party agrees not to weaken or reduce, in a manner affecting trade or investment between the parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to effectively enforce its environmental law or climate level of protection (Article 391). The introduction of the OEGW as an independent body responsible for overseeing compliance with environmental law, including enforcing compliance with environmental law, will directly support this commitment.

The UK and EU also each commit to respect the internationally recognised environmental principles to which it has committed, in particular:

- the principle that environmental protection should be integrated into the making of policies, including through impact assessments;
- the principle of preventative action to avert environmental damage;
- the precautionary approach referred to in Article 356(2)
- the principle that environmental damage should as a priority be rectified at source; and
- the polluter pays principle (Part 2, Heading 1, Title XI, Article 393)

Part 1 of the Bill directly supports this commitment by making provision about environmental principles and the integration of environmental protection, including duties to apply the principles when making policy or undertaking SEA (as the case may be).



*OEGW – Office of Environmental Governance Wales
*EWA – Environment (Wales) Act 2016
*SMNR – Sustainable Management of Natural Resources
*SLM – Sustainable Land Management